TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 271.

JOEL PARKER WHITNEY ET AL., APPELLANTS,

vs.

THE UNITED STATES ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

FILED MAY 9, 1895.

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a UNITED STATES OF AMERICA,
Territory of New Mexico.

Be it remembered that heretofore, to wit, on the 2nd day of March, A. D. 1893, Joel Parker Whitney *et al.*, by their attorney, John H. Knaebel, filed in the office of the clerk of the court of private land claims in and for the Territory of New Mexico a petition in which said Joel Parker Whitney *et al.* are plaintiffs and The United States of America is defendant; which said petition is in words and figures following, to wit:

1 In the Court of Private Land Claims of the United States.

JOEL PARKER WHITNEY, JOSE JUAN LUCERO, LAURIANO Lucero, Juan Cristoval Lucero, Jose de Jesus Lucero, Juan Teodoro Lucero, Jose Telesforo Lucero, Bernard S. Rodey, and Hannah Harris, Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent. } 205.

To the Honorable Joseph R. Reed, chief justice of the court of private land claims of the United States:

The undersigned petitioners, Joel Parker Whitney, Jose Juan Lucero, Lauriano Lucero, Juan Cristoval Lucero, Jose de Jesus Lucero, Juan Teodoro Lucero, Jose Telesforo Lucero, Bernard S. Rodey, and Hannah Harris, by this their petition, complaining of The United States of America, respondent, show unto the said court as follows—that is to say:

2 On the second day of August, A. D. 1728, the King of Spain, by Juan Domingo de Bustamente, his governor and captain general of the royal province of New Mexico, upon the petition to that end of Antonio Lucero, who had been for many years a military office- in the Spanish service, made to the said Antonio Lucero a grant in fee-simple of a certain tract of land situate in the said province (and now being wholly within the county of Bernalillo, in the present Territory of New Mexico) and bounded and described as follows, viz:

That certain tract of land which is bounded on the north by the old pueblo of Cochiti, on the east by the Rio del Norte (otherwise called the Rio Grande), on the south by the lands of the Cochiti Indians, and on the west by the Jemez mountains, with its entrances and exits, watering places, uses, and customs.

The said grant was made by a granting decree signed by the said governor and dated on the day last aforesaid and countersigned by Antonio de Cruciaga, his secretary of state and war, and in and by the said decree the said governor made the said grant to the said Antonio Lucero in the name of the King of Spain, and directed that the said grantee should be placed in royal and personal possession under the boundaries described in the said petition, being

the boundaries hereinbefore specified; and further commanded that, having acquired the said granted land quietly and peaceably, the said grantee should not be dispossessed, and that he and his
3 heirs might enjoy the same, subject to the condition subsequent that the said grantee should settle the same within the time prescribed by the royal ordinance in that behalf; and further commanded that after the delivery of juridical possession of the said land the said grantee should return to the said governor the original title papers, to the end that a duplicate thereof might be furnished to the said grantee. In execution of the said granting decree and in obedience thereto Captain Andres Montoya, chief alcalde of the pueblos of Cochiti, Santo Domingo, and San Felipe, being duly authorized and commissioned as a judicial officer in that behalf, gave to the said Antonio Lucero juridical possession of all and singular the said granted land and premises on the sixth day of August, in the year seventeen hundred and twenty-eight, having first found that there was no person whatever who could claim the same under a better right; and thereupon, on the same day, the said judicial officer signed, executed, and delivered an act of juridical possession in the premises in due form of law in the presence of his attending witnesses.

The said granting decree and act of juridical possession were thereupon returned to the said governor and placed in the royal archives kept in the city of Santa Fé, New Mexico, and a testimonio or duplicate thereof was thereupon delivered by the direction of the said governor to the said grantee. The said testimonio or duplicate is not in the possession, custody, or control of your petitioners, but they aver, upon their information and belief, that the same was deposited in the governmental archives at Santa Fé aforesaid
4 upon the cession of New Mexico to the United States, and has ever since been in the custody of the last-named sovereignty.

Duplicate copies of the said granting decree and act of juridical possession (in both Spanish and English) are herewith filed.

The said granted tract of land is all situate in the county of Bernalillo, in the Territory of New Mexico, and it has been surveyed by authority of the United States as a private land claim, and a map made thereof as so surveyed, which map is now kept among the archives and in the office last aforesaid. A copy of the said map, showing the extent and boundaries of the said land grant, is filed herewith.

The area of the said granted land is one hundred and four thousand five hundred and fifty-four acres and twenty-four one hundredths of an acre.

The said grantee, Antonio Lucero, entered upon, settled, occupied, resided upon, improved, enjoyed, and claimed all and singular the said tract of land, holding and claiming the same in fee-simple absolute, peaceably, openly, continuously, uninterruptedly, and exclusively, under and by virtue of the said grant, from the date of the said act of juridical possession, to wit, the sixth day of August, A. D. 1728, for a period much longer than four years and up

to the time of his death. He died seized and fully possessed of all and singular the said tract of land, whereupon the same descended to his descendants, his heirs-at-law, who, with
5 their legal representatives, thenceforward continued under the same claim of title the peaceable, open, continuous, uninterrupted, and exclusive possession and occupation of all and singular the said tract of land up to and after the cession of New Mexico to the United States, save only that in the year seventeen hundred and eighty-five one Antonio Gallego, a lieutenant in the Spanish military service, intruded into the Canada del Medio, a portion of the said tract, upon the pretence that he had been authorized by Governor Don Juan Bantista de Anza to occupy and use the said canada for the pasturage of the royal cavalry: whereupon, in the month of November, A. D. 1785, Antonio Lucero de Godoi and numerous others, descendants and heirs-at-law of the said deceased grantee, Antonio Lucero, presented their petition to Antonio de Armenta, chief alcalde and war captain, having judicial and administrative jurisdiction in the premises, and thereby they complained of the said intrusion of the said Antonio Gallego and expressed their dissent to his said adverse proceedings, and declared that their fathers and grandfathers had left the said granted tract of land to all of them equally, and they prayed that the said judicial and administrative officer should secure them relief in the premises.

In view of the said petition, the said Antonio de Armenta, chief alcalde and war captain, reported the said petition and the subject-matter thereof to the governor and captain general of New Mexico, then and there representing the royal person, and the said governor and captain general, upon due consideration of the said petition,
6 found and determined, and so declared in substance to the said chief alcalde and war captain, that inasmuch as the said petitioners were in all respects the legal heirs of the said granted tract of land, they were entitled to enjoy it as their own in preference to any other individual, and the said intrusion and pretence of the said Antonio Gallego were unjust and unfounded and a grievous harm to the said heirs.

Thereupon the said chief alcalde and war captain, under full authority in that behalf conferred upon him by the said governor and captain general and in discharge of his lawful jurisdiction as chief alcalde aforesaid, duly made his order and judgment, reciting the said petition, the *the* said report to the governor and captain general, and the said determination by the said superior authority thereupon, and adjudging and declaring that the said order and judgment, being an instrument in writing signed by the said chief alcalde and his attendant witnesses and bearing date on the second day of November, A. D. 1785, should remain as conclusive evidence of the rightful title of the said heirs to the said land grant and of its rightful acquisition by them and their descendants from the King of Spain, and by the said instrument the said chief alcalde, in the exercise of the judicial jurisdiction legally vested in him, declared that the same should remain before any tribunal or judge as

evidence for all time of the title of the said heirs to the said granted tract of land.

7 The originals of the said petition and adjudicatory instrument are in the possession of the respondent, kept in its said archives at Santa Fé, but your petitioners file herewith duplicate copies of the same in both Spanish and English.

Your petitioners are all interested in the said tract of land as claimants under the said grant thereof, the said Joel Parker Whitney owning by purchase from the heirs and legal representatives of the said original grantee the greater part of the said tract in fee-simple, the said Bernard S. Rodey and Hannah Harris claiming also certain shares and interests therein by purchase from the said heirs and legal representatives, and the others of your petitioners being heirs of the said original grantee who have sold and conveyed their shares in the said granted tract of land to the said Joel Parker Whitney, excepting certain small parcels retained by them respectively in severalty and on which they are respectively residing.

The said granted tract of land has remained in the actual possession of the heirs and legal representatives of the said original grantee, all claiming the same in fee-simple absolute under the said grant, ever since the cession of New Mexico to the United States, and your petitioners under the same claim are now in possession thereof.

All the conditions precedent and subsequent to the said grant at any time incumbent upon the said grantee or his heirs or assigns have been fully performed and discharged.

8 There are no adverse possessors of the said granted tract of land, to the knowledge of your petitioners, and no adverse claimants, unless persons unknown to your petitioners pretend to question the correctness of the said survey.

Your petitioners claim the said land grant as a perfect title, vested in them in fee-simple absolute, according to their respective estates, shares, and interests therein, and they aver that the said land grant was a complete and perfect title before and at the time of the cession of New Mexico to the United States.

The said private land claim has not heretofore been confirmed, considered, or acted upon by Congress or the authorities of the United States, or been heretofore submitted to any authorities constituted by law for the adjustment of land titles within the limits of the territory acquired by the United States from Mexico, or been by any such authorities reported on unfavorably or recommended for confirmation or authorized to be surveyed, except only that the same was examined, considered, and approved by Surveyor General Hon. Henry M. Atkinson to a limited extent, and so recommended by him to Congress for confirmation, in and by his report (No. 135) to Congress, dated August 25, 1883, and thereafter the said granted tract of land was surveyed by direction of the succeeding surveyor general, Hon. Clarence Pullen, and of the acting Commissioner of the General Land Office, Hon. L. Harrison, and the survey, plat, and field-notes in the premises were approved by the last-named surveyor general June 29, 1885, and subsequently

Hon. George W. Julian, surveyor general, and Hon. William A. J. Sparks, Commissioner of the General Land Office, promul-
9 gated adverse opinions on the said private land claim; but your petitioners are advised by counsel and believe the two opinions last aforesaid were not promulgated within the competency or jurisdiction of the two officials last above named or of either thereof.

To the end that the said private land claim may be confirmed, surveyed, and patented in favor of your petitioners, they pray that the validity of their said title and claim and of the said grant may be inquired into and decided by this honorable court, and that they may have all the relief in the premises which the said court is competent to afford and decree by virtue of the act of Congress under which it is organized.

JOEL PARKER WHITNEY,
JOSÉ JUAN LUCERO,
LAURIANO LUCERO,
JUAN CRISTOVAL LUCERO,
JOSÉ DE JESUS LUCERO,
JUAN TEODORO LUCERO,
JOSÉ TELESFORO LUCERO,
BERNARD S. RODEY,
HANNAH HARRIS, *Petitioners.*

JNO. H. KNAEBEL,
Attorney for Petitioners.

9½ And be it remembered that afterwards, to wit, on the 3rd day of March, A. D. 1893, Manuel Hurtado and Jose Antonio Gallegos, by their attorney, N. B. Laughlin, filed in the office of the clerk of the court of private land claims in and for the Territory of New Mexico a petition in which said Manuel Hurtado and Jose Antonio Gallegos are plaintiffs and the United States of America is defendant; which petition is in the words and figures following, to wit:

10 UNITED STATES OF AMERICA, }
Territory of New Mexico. }

In the United States Court of Private *of* Land Claims, Santa Fé District, March, 1893, Term.

MANUEL HURTADO, JOSE ANTONIO GALLEGO, Plaintiffs, }
vs.
THE UNITED STATES, Defendant. }

To the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the honorable the associate justices there-:

Your petitioners, Manuel Hurtado and José Antonio Gallego, respectfully show that they are interested in that certain land claim known as Cañada de Cochiti grant and private land claim, reported as No. 135, situate in the county of Bernalillo, Territory of New

Mexico, which said private land claim was made to Antonio Lucero on the 2nd day of August, 1728, by Don Juan Domingo de Bustamante, the governor and captain general of the province of New Mexico, the same being at that time a royal ultramarine province of the Crown of Spain, for agricultural and grazing purposes;

11 that said grant has been approved by the United States surveyor general of New Mexico, and a preliminary survey of said grant — under the authority of said surveyor general, and has — found to contain 104,554.24 acres, and is bounded and described as follows, to wit:

"On the north by the old Pueblo de Cochiti; on the east side *of* the Rio del Norte.

On the south by lands of the natives of the said pueblo.

On the west by the Jemez mountains."

All of which will more fully appear by reference to the copies of originals, which your petitioners pray leave to file as soon as they can be obtained.

That all the original expedient- of title are among the archives in the office of the said surveyor general, and they with all proper evidence there on file and herewith tendered.

That the title to said lands is complete and perfect in the heirs, successors, and legal representatives of said Antonio Lucero, the original grantee.

Your petitioner- pray leave to amend their petition hereafter in accordance with the facts which may come to their knowledge.

The premises considered, your petitioners pray that the va-

12 lidity of the claim be inquired into and decided, and that the United States, here made party defendant, make answer to this petition, as the law provides in such cases made and provided, and that on the final hearing a decree be made and entered confirming the title to said lands in the heirs, successors, assigns, and legal representatives of Antonio Lucero, the original grantee, as against the United States, and for such other and further relief as allowed by the act of Congress establishing this honorable court and under which jurisdiction is here acquired and as may seem meet and proper in the premises.

MANUEL HURTADO,
JOSE ANTONIO GALLEGOS,
Plaintiffs.

N. B. LOUGHLIN,
Att'y for Plaintiff.

13 And be it further remembered that afterwards, to wit, on the 25th day of March, A. D. 1893, a summons was issued from the office of said clerk in the said cause; which said summons is in the words and figures following, to wit:

14 *Summons.*

UNITED STATES OF AMERICA, } ss:
District of New Mexico, }

In the U. S. Court of Private Land Claims.

JOEL P. WHITNEY *et al.*, Plaintiff-, } Petition Filed in the
versus } Clerk's Office this 2d
THE UNITED STATES OF AMERICA, De- } Day of March, A. D.
fendant. } 1893.

The President of the United States of America to Matt. G. Reynolds, Esq., Greeting:

You and each of you are hereby notified that an action has been brought in said court by Joel P. Whitney *et al.*, plaintiff-, against you as defendant, under the provisions of the act of the Congress of the United States entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3d, 1891, and that a copy of the petition of said plaintiff- is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you, and if you fail so to do the said plaintiff- will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Santa Fé, in said district, this 25 day of March, A. D. 1893, and of the Independence of the United States the 117 year.

[SEAL.] JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES,
Deputy Clerk.

14½ And be it further remembered that afterwards, to wit, on the 21st day of April, A. D. 1893, a return of said summons was filed in the office of said clerk in the said cause; which said return of summons is in the words and figures following, to wit:

15 *Proof of Service.*

UNITED STATES OF AMERICA, } ss:
District of New Mexico, }

SANTA FÉ, *April 1st, A. D.* 1893.

I hereby certify that I received the within writ on the 1st day of April, A. D. 1893, and that I have personally served the same upon the said defendant, U. S.

Served on me this the 3d day of April, 1893.

MATT. G. REYNOLDS,
U. S. Attorney.

This writ therefore returned by me as the law directs this 21st day of April, A. D. 1893.

TRINIDAD ROMERO, *Marshal*,
By SERAPIO ROMERO,
Deputy Marshal.

Marshal's Fees.

Service, — defendants, at $2	$
Mileage, — miles, at 6c., going only	
Summons	4 00
Total	$4 00

Paid by —— ——.

[Endorsed:] Gen. No., 205. U. S. court of private land claims, district of New Mexico. Joel P. Whitney *et al.*, plaintiff, *versus* The United States, defendant. Summons. Filed this — day of ——, A. D. 189–. James H. Reeder, clerk, by —— ——, deputy clerk. —— ——, of ——, attorney for plaintiff.

15½ And be it further remembered that afterwards, to wit, on the 12th day of July, A. D. 1894, an abstract of title was filed in the said cause in the office of said clerk; which said abstract is in the words and figures following, to wit:

16 TERRITORY OF NEW MEXICO, } *ss.*:
County of Santa Fé, }

Court of Private Land Claims.

JOEL PARKER WHITNEY *et al.*
vs.
THE UNITED STATES OF AMERICA. } (No. 205.)

Abstract of Title.

For the purpose of showing his right to advocate in this court the private land claim known as the Canada de Cochiti grant, the claimant, Joel Parker Whitney, without prejudice to his other shares and interests in the said property, submits the following deraignment of certain of his undivided shares therein, viz:

1. Petition of Antonio Lucero to the governor and captain general of New Mexico, presented on or about August the 2nd, 1728, praying for a grant of a tract bounded on the north by the old pueblo of Cochiti, on the east by the Rio del Norte, on the south by *by* lands of the natives of the pueblo of Cochiti, and on the west by the Jemez mountains, with its entrances and exits, watering places, uses, and customs.

2. Granting decree of the said governor and captain general, dated August 2, 1728, reciting the said petition, and granting to the petitioner, in the King's name, the lands so petitioned for

under the boundaries referred to in the said petition, and directing that the grantee be placed in royal and personal possession of the said land, and declaring that the grantee should not be dispossessed therefrom, but that he and his heirs might enjoy the same, etc.

17 3. Act of judidical possession signed by Captain Andres Montoya, chief alcalde of the pueblos of Cochiti, Santo Domingo, and San Felipe.

4. An official copy of the said petition, grant, and act of possession made and authenticated by Juan Antonio Cabeza de Baca, chief alcalde of Cochiti, and its jurisdiction, exercising the functions of a royal notary, dated December 30, 1817.

5. Petition of Antonio Lucero de Godoi and other heirs and legal representatives of the said grantee, Antonio Lucero, addressed to Antonio de Armenta, chief alcalde and war captain, praying judicial and other relief against one Antonio Gallego, an unlawful intruder and trespasser on the Cañada de en Medio, part of the said grant.

6. Declaration and adjudication by Antonio Armenta, chief alcalde and war captain, etc., exercising the functions of a royal notary, dated November 2, 1785, reciting the said petition and reciting also a reference of the subject thereof to the governor and captain general, and, in accord with the recited opinion of that superior authority, determining the said petition or suit in favor of the petitioners and in confirmation of the said grant.

7. In or about the year 1750 the said grantee died seized of the said granted tract, leaving him surviving his widow, Francisca Jaramillo de Lucero, and seven children, his heirs-at-law, among which children was a son named Martin Lucero, who, upon the death of his said father as aforesaid, inherited one undivided seventh part or share of the said granted tract.

8. The said Martin Lucero thereafter died intestate, seized
18 of his undivided share in the said tract inherited as aforesaid and otherwise, as well as seized in severalty of a small parcel thereof, situate in the Canada de Cochiti, and which, up to the time of his death, he had occupied as his home, and he left him surviving his son, Francisco Xavier Lucero, his only heir-at-law, who thereupon inherited the interest aforesaid of his said father in the said granted land.

9. The said Francisco Xavier Lucero conveyed his said inherited interest to Pablo Aragon by a written instrument of conveyance dated December 20, 1833, duly executed before Francisco Alvino Aragon, alcalde, etc., of the jurisdiction of Cochiti, etc., exercising the functions of a notary public.

10. The said Pablo Aragon afterwards died intestate, seized of all the estate, right, title, interest, possession, and claims which he had ever had or acquired in the said granted tract, and left him surviving as his only heir-at-law his son, Eusebio Aragon.

11. Afterwards the said Eusebio Aragon, seized as aforesaid, made and delivered to the claimant, Joel Parker Whitney a certain deed of conveyance, in whose execution his wife, Eucarnacion Gon-

zales de Aragon, joined, dated February 19, 1881, and recorded April 11, 1881, in Bernalillo county, in Book O, pages 140 to 142, whereby they conveyed to the said claimant all and singular their right, title, interest, and estate in and to the said granted tract, except a small parcel of agricultural land in the said deed described.

In addition to the foregoing, the said claimant has purchased from the descendants (being lawful heirs) and legal representatives of the said original grantee numerous undivided shares of
19 the said granted tract by means of their deeds of conveyance below tabulated and copies whereof are herewith filed:

Names of grantors.	Dates of deeds.
Aragon, Fernando	March 23, 1881.
" Francisco	January 25, 1881.
" Gregorio, and wife	" 26, "
" Francisco	" 25, "
" Jose Bernardo, and wife	" 27, "
" Jose Francisco, and wife	February 28, 1881.
" Maria Louisa	January 25, 1881.
" Maria Ysidora	" 25, "
" Martina	February 5, "
" Luz	March 26, "
" Lorenzo	January 25, "
" Proto	November 1, 1882.
" Manuel	" 1, "
" Victor	January 25, 1881.
" Lorenza	September 15, 1883.
" y Lucero, Manuel	October 17, 1881.
Armijo, Anastacia	February 19, 1881.
" Domingo	November 25, 1882.
" Nestor	November 25, 1882.
" Nicanor	November 25, 1882.
Archeveque, Petra	November 27, 1882.
Ateucio, Cipriano, and wife	February 20, 1883.
Baca, Domingo C. de, and wife	November 25, 1882.
Baca, Josefa C. de	March 26, 1881.
20 Baca, Manuel C. de	March 26, 1881.
" Roman, and wife	January 27, "
Baca, Marcelino, and wife	January 26, 1881.
" Facunda, " "	July 19, 1881.
" Jose Pacifico, and wife	December 20, 1881.
" Jose, and wife	November 28, 1882.
" Francisco, and wife	December 20, 1881.
" Esquipula, and wife	January 27, 1881.
" Cecelia	" 27, "
" Precelina	January 26, 1881.
" Ma. Gertrudes Lucerado	December 12, 1881.
Borrego, Maria Tomasa	January 25, 1881.
Chaves, Maria Luz	February 19, 1881.
Crespin, Maria Sencion	December 20, 1881.

Espinoso, Feliz, and wife ..... February 20, 1882.
" Maria de la Luz ..... February 5, 1881.
Garcia, Francisco ..... March 26, 1881.
" Antonio, and wife ..... " 26, 1881.
" Juana Maria ..... " 26, "
" Rosalia ..... November 25, 1882.
" Ynez ..... March 26, 1881.
Gallegos, Jose Pablo, and wife ..... December 20, 1881.
" Ricado, and wife ..... November 25, 1882.
Garuño, Espiridon, and wife ..... November 25, 1882.
Gonzales, Maria Camelia ..... March 7, 1882.
21 Gonzales, Maria Cesaria ..... February 28, 1881.
" Maria Andrea ..... March 6, 1882.
Gonzales, Manuel ..... March 7, "
" Jose Juan ..... May 23, 1881.
" Encamacion ..... February 19, 1881.
" Felipe, and wife ..... November 27, 1881.
" Valeria ..... November 27, 1882.
" Maria Juana ..... July 20, 1882.
Hurtado, Guadalupe ..... December 20, 1882.
" Francisca ..... December 20, 1881.
Jiron, Jose Guadalupe ..... March 7, 1882.
" Lucrecio, and wife ..... March 7, 1882.
" Petra ..... November 27, 1882.
Leyoa, Maria Benigna ..... January 22, 1881.
" Maria Rosaria ..... " 22, "
" Maria Juana ..... December 12, 1881.
Lopez, Maria Filomena ..... March 7, 1882.
" Benigno, and wife ..... September 15, 1883.
Lovato, Patricio ..... November 25, 1882.
" Nestora ..... November 25, 1882.
Lucero, Anastacio, and wife ..... February 19, 1881.
" Antonio Hilario, and wife ..... January 22, 1881.
" Andrieta Gonzales ..... November 27, 1882.
" Benigna Gonzales de ..... November 27, 1882.
" Benita, and wife ..... September 15, 1882.
" Casimiro, and wife ..... November 27, 1882.
Lucero, Dolores ..... September 15, 1883.
22 Lucero, Estefano ..... March 29, 1881.
" Eugenia ..... November 25, 1882.
Lucero, Florencia ..... December 20, 1881.
" Felipa ..... November 27, 1882.
" Guilermo ..... February 28, 1881.
" Jose ..... " 28, "
" Jose de Jesus, and wife ..... January 24, 1881.
" Jose Juan ..... February 9, 1881.
" Jose Fernando, and wife ..... January 22, 1881.
" Jose Julian, and wife ..... January 22, 1881.
" Jose Mariano ..... September 4, 1882.
" Jose Marcels, and wife ..... November 27, 1882.
" Jose Talesforo ..... January 22, 1881.

Lucero, Jose Antonio.....May 23, 1881.
" Jose Ignacio, and wife.....November 25, 1882.
" Juan Cristoval.....January 24, 1881.
" Juan Teodora, and wife..... " 22, 1881.
" Josefita.....September 15, 1883.
" Lenor.....September 15, 1883.
" Perfilia.....February 28, 1881.
" Ma. Gilia.....January 27, 1881.
" Ma. Guadalupe.....January 12, 1881.
" Ma. Martian..... " 22, 1881.
" Ma. Ynez..... " 26, 1881.
" Ma. Polonia.....March 29, 1881.
" Ma. Guadalupe Martinez de.....January 22, 1881.
" Ma. Quirina.....January 22, 1881.
" Ma. y de las Nieves.....November 25, 1882.
Lucero, Ma. Juana.....November 28, 1882.
23 Lucero, Micaela.....January 27, 1881.
" Margarita.....February 28, 1881.
Lucero, Martin, and wife.....January 22, 1881.
" Leonada.....December 20, 1881.
" Lauriano.....January 22, 1881,
" Pablo Ruperto.....February 9, 1881.
" Ruperta.....June 13, 1881.
" Romana.....November 25, 1882.
" Rufina.....January 22, 1881.
" Quirino.....December 23, 1881.
" Solidad.....September 19, 1881.
" Santiago.....January 28, 1881.
" Silencio.....February 28, 1881.
" Tomas, and wife.....November 27, 1882.
" Victoria.....November 27, 1882.
Madrid, Juan, and wife.....March 26, 1881.
Mares, Guadalupe.....January 26, 1881.
Martinez, Pedro, and wife.....March 6, 1882.
" Manano, and wife.....November 25, 1882.
Martin, Manuel, and wife.....February 8, 1882.
Mestas, Mauricio.....December 28, 1881.
Miera, Altagracio.....December 28, 1881.
Montano, Ma. Paula.....March 7, 1882.
Montano, Sencion, and wife.....November 27, 1882.
Montano, Ma. Estefana.....January 22, 1881.
24 Montoya, Faustin, and wife.....June 12, 1881.
" Feliz.....September 19, 1881.
Montoya, Patricio.....June 12, 1881.
" Juan Luis, and wife.....June 12, 1881.
" Juan.....September 19, 1881.
" Juan Jose.....March 4, 1881.
" Candida Blea.....February 20, 1882.
" Formaseta Blea..... " 20, "
" y Bernal Cristerna.....April 25, 1881.
Morales, Teodora.....April 25, 1881.

Moreiga, Juan Simon, and wife.....December 20, 1881.
Ortiz, Jose B., and wife.....July 25, 1882.
" Ma. Antonio.....May 23, 1881.
" Rosaria.....June 12, 1881.
De la O, Manuel, and wife.....September 15, 1883.
" Nicolas, and wife.....September 15, 1883.
Padilla, Bartolo, and wife.....September 19, 1881.
Read, Benjamin M., and wife.....September 9, 1882.
" Magdalena S. de..... " 9, "
Roival, Ma. Martina.....January 24, 1881.
" Valentina.....November 27, 1882.
Romero, Cesaria.....July 25, 1882.
" Crisantos.....July 25, 1882.
" Paula.....July 25, 1882.
Romero, Manuela.....July 25, 1882.
25 Romero, Ygnacio.....July 25, 1882.
Salas, Vicente.....July 20, 1882.
Salas, Sefirino.....July 20, 1882.
" Paula.....July 20, 1882.
" Ma. Dolores.....July 20, 1882.
" Ma. Clara.....July 20, 1882.
" Ma. Ygnacia.....January 22, 1881.
" Ma. Pabla.....January 22, 1881.
" Francisca.....July 20, 1882.
" Juan Nepumoseno, and wife.....June 13, 1881.
" Tomas, and wife.....March 26, 1881.
" Teresita.....January 26, 1881.
" Tomasa.....November 25, 1882.
Sanches, Jose Ignacio, and wife.....December 12, 1881.
" Manuel.....April 25, 1881.
" Rufina.....May 23, 1881.
" Ma. Carmel.....February 8, 1882.
Sandoval, Felipe, and wife.....January 22, 1881.
" Zenon, and wife.....January 26, 1881.
" Florencio.....August 8, 1882.
" Jose Antonio, and wife.....January 22, 1881.
" Ma. Simona.....January 26, 1881.
" Refugio.....July 2, 1883.
Salazar, Ramon.....May 23, 1882.
Silva, Ma. Remedios de.....July 12, 1881.
Tafoya, Tomas, and wife.....April 25, 1881.
26 Tofoya, Juan Francisco, and wife.....February 5, 1881.
" Agapito, and wife.....February 19, 1881.
Tofoya, Ma. Meregildo..... " 5, "
" Ma. Jacinta.....January 22, 1881.
Varos, Antonio, and wife.....November 25, 1882.
Vigil, Petra.....July 19, 1881.

JNO. H. KNAEBEL,
Pl'ffs' Att'y.

26½ And be it further remembered that afterwards, to wit, on the 11th day of September, A. D. 1894, an answer was filed in said cause in the office of said clerk; which said answer is in the words and figures following, to wit:

27 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District, 1894.

JOEL P. WHITNEY *et al.*, Plaintiffs,
vs.
THE UNITED STATES, Defendant. } No. 205. Canada de Cochiti.

Answer.

Comes now the United States, by its attorney, Matt. G. Reynolds, and, for answer to the petition filed in the above-entitled cause, says that it has no knowledge or information sufficient to enable it to form a belief as to whether, on the second day of August, 1728, the King of Spain, by Juan Domingo de Bustamente, the alleged governor and captain general of the royal provinces of New Mexico, upon the petition to that end of Antonio Lucero, made to him a grant in fee-simple of a certain tract of land described in said petition or not, nor as to whether said decree was signed by said governor and countersigned by Antonio de Cruciaja, his alleged secretary of state and war, nor whether by said decree directed that said Lucero should be placed in royal and personal possession under the boundaries described in the said petition.

28 Nor as to whether it is provided in said decree that the grantee should not be dispossessed, and that he and his heirs might enjoy the same subject to the condition that the grantees should settle upon the same within the time described by the royal ordinance in that behalf, nor as to whether it was directed that after the delivery of juridical possession to the original grantee the original title papers should be returned to the governor, in order that a duplicate or *testimony* thereof might be furnished said grantee, nor as to whether in the execution of said granting decree Andreas Montoya, chief alcalde of the pueblos of Cochiti, Santo Domingo, and San Felipe, being duly authorized and commissioned as a judicial officer in that behalf, gave to the said Antonio Lucero juridical possession, as alleged in said petition.

Further answering, it says that it is not true that said alleged granting decree and act of possession were returned to the governor and placed in the royal archives in the city of Santa Fé, New Mexico, nor that a testimonio or duplicate thereof was delivered to said alleged grantee under and by virtue of the directions of the governor.

It denies that said alleged testimonio or duplicate was ever placed in the governmental archives at Santa Fé upon the cession of New Mexico to the United States, for the reason that there was no necessity for any law authorizing the same, but that the owners or al-

leged owners of said grant were the proper custodians of said alleged testimonio.

Says it has no knowledge or information sufficient to enable it to form a belief as to the location of said grant.

29 It denies that said Antonio Lucero ever entered upon said tract of land sued for and occupied the same or appropriated the same, as alleged in said petition, for the reason that it was impossible and improper for him to do so; that under the conditions of the country at that time and for more than a century afterwards it was impossible for Lucero or any one else to occupy, appropriate, and use, directly or indirectly, the land described in plaintiffs' petition, all of which said Lucero well knew at the time it is alleged he applied for said grant.

It denies that said Lucero entered upon, occupied, improved, and enjoyed said claim peaceably and openly from the date of the alleged juridical possession, the 6th day of August, 1728, for a period much longer than four years, and that he died lawfully seized and possessed of the same, or that his heirs or legal representatives continued in the peaceable, open, continuous, and exclusive possession and occupation of said claim or any part thereof.

Says that as to the allegation that in the year 1785 one Antonio Gallego intruded into the Canada del Medio, an alleged portion of said tract, upon the pretence that he had been authorized by Governor Don Juan Bautista de Anza to occupy and use the same for the pasturage of the royal cavalry, it has no knowledge or information.

Nor as to whether in the month of November, A. D. 1785, Antonio Lucero de Godoi and numerous others, claiming to be de-

30 scendants and heirs-at-law of said Antonio Lucero, presented a petition to Antonio de Aremnta, chief alcalde and war captain of that jurisdiction, complaining of said intrusion by said Antonio Gallego and asking for judicial investigation of the same and for relief in the premises.

It says it has no knowledge or information sufficient to enable it to form a belief as to whether said Antonio de Armenta, chief alcalde and war captain, reported the said petition and the subject-matter thereof to the governor and captain general of New Mexico.

Nor as to whether in passing upon said matter the said alcalde had any authority to act in that behalf under the directions of said governor, nor as to whether he had any authority in the premises other than by virtue of the recitals in the said expediente.

Has no knowledge or information sufficient to enable it to form a belief as to whether said alcalde undertook to make a finding in said matter or not, nor as to whether he undertook to or did attempt to make the allegation set forth in said petition, but if he did so do the same is without warrant or authority of law, without any warrant or authority from said governor, the said alcalde having no other power or authority in that behalf than that which might be conferred upon him for that purpose by the governor of the province.

And it therefore denies that said alcalde had jurisdiction
31 in the premises, and denies that any jurisdiction is shown in that behalf.

It denies that the originals of said petition and adjudicatory instrument dated in the year 1785 are in said archives or ever were; that if the same were in possession of surveyor general they were filed with said surveyor general under the law of June 22, 1854, and provided for the adjustment of private land claim- in the Territory of New Mexico; that the same never constituted part of the archives of the Spanish or Mexican government, and no action was ever taken upon said alleged acts of said justice by the governor of this province or any one else; therefore it constitutes neither adjudication or admission on the part of the Spanish government, but is simply an unauthorized and unapproved act of an alcalde.

Says it has no knowledge or information as to whether the plaintiffs in said case have any interest in said grant, either legal or equitable, and therefore calls for strict proof.

It denies that said grant has remained in possession of the heirs and legal representatives of Antonio Lucero, but, on the contrary, avers that the same has been vacant, uninhabited, and unoccupied for time out of mind.

It denies that all conditions precedent and subsequent to said grant imposed by law or the grant itself have been fully complied with.

That as to the allegation in said petition that there are
32 no adverse possessors of said tract of land, it avers upon information and belief that according to the boundaries and area claimed in said petition that said claim conflicts with an adverse claim, commonly designated as the Ramon Vigil grant, dated in 1742; also with the Rito du los Frijoles, claimed to have been made some time prior to 1780, which said claim is now pending in this court; with the Canon de San Diego, made in 1798; also with the Canon de San Diego claim, made in 1788, which are now pending on appeal from the Supreme Court of the United States *of* this court; also with the Ojo del Borrego or Nerio Antonio Montoya grant, alleged to have been made in the year 1768, which said claim is now pending in this court; also with a claim called the Peralta grant, the exact date of which is unknown to this defendant, but that the same is now pending in this court; all of which said claimants have been and are actively asserting title under said alleged grants adversely to this plaintiff as well as to the United States. The owners of each of said claims are interested as adverse claimants in defending the claim of these plaintiffs, and are necessary parties defendants, and the United States therefore pleads a defect of parties defendant in this behalf.

It denies that said alleged grant is a perfect title and has vested in the petitioners a fee-simple title or any other title, and it denies that the same is entitled to confirmation or recognition by this court.

Further answering, it says that said grant, if it were ever made in the year 1728, as alleged, was never presented to the governor of

this province for examination and adjudication under the
33 provisions of the cedula of October 15, 1754, and that by virtue of the provision of said cedula and by virtue of the failure on the part of said alleged grantee and those claiming under him to present said grant as provided, the same was deemed to be abandoned, and all rights therein conferred should be considered no longer a claim against the United States.

Further answering, it says that said alleged petition by Antonio Lucero was one for a small piece of land on which to cultivate ten fanegas of wheat and two of corn and to pasture small stock and horses; that the boundaries designated in said petition were only to indicate the district of country within which said small piece of land was located; that in acting upon said petition, if he ever did, said governor did not make a grant, but specially reserved that act until after the alcalde should have placed the property in possession of the petitioner and returned the expediente to him for final action, which this defendant avers was never done, and therefore no grant, either legal or equitable, was ever made.

All other allegations in said petition contained which have not been traversed and admitted and which are material for this defendant to answer are denied.

It therefore says that said grant is not one which, under the laws of Spain or the treaty of cession or the principals of justice, is entitled to confirmation, and it therefore prays that said claim may be rejected and said petition dismissed.

33½ And be it further remembered that afterwards, to wit, on the 21st day of September, A. D. 1894, the same being the 33d day of the August term, A. D. 1894, the following proceedings were had in the said cause, to wit:

34 JOEL PARKER WHITNEY *et al.*, Plaintiffs,
vs.
THE UNITED STATES, Defendant. } Cochiti Grant. No. 205.

MANUEL HURTADO *et al.*, Plaintiff-,
vs.
THE UNITED STATES, Defendant. } Canada de Cochiti Grant. No. 240.

It appearing to the court that the subject-matter in the above-entitled causes is substantially the same, and that the causes can be consolidated and heard together as one cause, by agreement in open court and consent of all parties, it is ordered now here by the court that the said two causes be, and the same hereby are, joined and consolidated, and the same shall be hereafter as one cause under the title of Joel Parker Whitney *et al. vs.* The United States, being No. 205 on the docket of this court, and that the said plaintiffs, Manuel Hurtado *et al.*, in cause No. 240, and the persons whom they represent shall be considered and treated as if they had been original petitioners under said cause No. 205; also ordered

that plaintiffs in cases No. 161, Juan Maria Armijo *et al. vs.* The United States; No. 95, Jose Alvino Baca *et al. vs.* The United States; No. 195, Amado C. de Baca *vs.* The United States; No. 41, George N. Fletcher *vs.* The United States, be made parties defendant, it appearing that they are asserting an adverse claim to portion of the land in question, and they appear as such.

34½ And be it further remembered that afterwards, to wit, on the 21st day of September, A. D. 1894, the same being the 33rd day of the August term, A. D. 1894, the following farther proceedings were had in the said cause, to wit:

35 JOEL PARKER WHITNEY *et al.* *vs.* THE UNITED STATES, Defendant. } Cochiti Grant. No. 205.

This cause coming on to be heard under the consolidation heretofore ordered and made, there appeared John H. Knaebel, Esq., for and on behalf of plaintiffs in the cause; James H. Purdy, Esq., appearing for plaintiffs in case Nos. 41 and 95; George Hill Howard, Esq., representing the petitioners in case No. 161; Matt. G. Reynolds, Esq., United States attorney, appearing for and on behalf of the said defendant, the United States, Messrs. C. H. Gildersleeve and C. H. Toll being associated with the United States attorney in the cause. The parties herein having announced themselves ready, the trial of the cause was proceeded with on the pleadings presented, documentary proof was introduced, and witnesses were presented and examined, the trial of the cause not being concluded when the court adjourned until tomorrow at 10 o'clock a. m.

Read and signed in open court.

JOSEPH R. REED,
Chief Justice.

35½ And be it further remembered that afterwards, to wit, on the 22nd day of September, A. D. 1894, the same being the 34th day of the August term, 1894, the following further proceedings were had in the above-entitled cause:

36 JOEL PARKER WHITNEY *et al.*, Plaintiffs, *vs.* THE UNITED STATES, Defendant. } Cochiti Grant. No. 205.

The above-entitled cause coming on to be further heard, all the attorneys in the cause being present, further oral and documentary proof was introduced, and the same not being concluded when the court adjourned until to Monday at 10 o'clock a. m.

Read and signed in open court.

JOSEPH R. REED,
Chief Justice.

36½ And be it further remembered that afterwards, to wit, on the 24th day of September, A. D. 1894, the same being the

eighth day of the August term, A. D. 1894, the following farther proceedings were had in said cause, to wit:

37 JOEL PARKER WHITNEY *et al.*, Plaintiffs, *vs.* THE UNITED STATES, Defendant. } Cochiti Grant. No. 205.

The trial of the above-entitled cause was resumed, and, all the attorneys in the cause being present, further oral and documentary proof was introduced, after which argument for the plaintiffs was begun by John H. Knaebel, Esq., and the same not being concluded when the court adjourned until tomorrow at 10 o'clock a. m.

37½ And be it further remembered that afterwards, to wit, on the 25th day of September, A. D. 1894, the same being the 36th day of the August term, A. D. 1894, the following farther proceedings were had in the said cause, to wit:

38 JOEL PARKER WHITNEY *et al.* *vs.* THE UNITED STATES. } Cochiti Land Grant. No. 205.

In the above-entitled cause the court resumed the hearing of arguments for plaintiffs; and John H. Knaebel, Esq., having concluded his argument, *and* the argument of *the* Matt. G. Reynolds, Esq., U. S. att'y, for and on behalf of the United States was begun and concluded; after which the cause was submitted, and the court, not being sufficiently advised in the premises, took the said cause under advisement.

39 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District, August Term, 1894.

JOEL PARKER WHITNEY *et al.*, Claiming "Cañada de Cochiti Grant," Plaintiffs, *versus* THE UNITED STATES, Defendant. } No. 205.

MANUEL HURTADO *et al.*, Claiming "Canada de Cochiti Grant," Plaintiffs, *versus* THE UNITED STATES, Defendant. } No. 240.

By order of court, made on the 21st day of September, 1894, cases Nos. 205 and 240 were consolidated.

Also by order of court, made on the 21st day of September, 1894, the plaintiffs in the following cases were made parties defendant in cases Nos. 205 and 240: George N. Fletcher *et al.*, claiming "Rita de los Frijoles grant," *versus* The United States, No. 41; Jose Albino Baca *et al.*, claiming "Ojo de Borrego grant," *versus* The United

States, No. 95; Juan Maria Armijo *et al.*, claiming "La Peralta grant," *versus* The United States, No. 161, and Anado C. de Baca *et al.*, claiming "Borrego Spring grant," *versus* The United States, No. 195.

40 On September 21st, 1894, at ten o'clock a. m., the above-entitled causes were called for trial, and the following proceedings were had therein:

Appearances.

John H. Knaebel, Esq., appeared on behalf of the plaintiffs in case No. 205.

N. B. Laughlin, Esq., appeared on behalf of the plaintiffs in case No. 240.

James H. Purdy, Esq., appeared on behalf of the plaintiffs, made parties defendant in cases Nos. 41, 95, and 195.

G. Hill Howard, Esq., appeared on behalf of the plaintiffs, made parties defendant in cases No. 161.

Matt. G. Reynolds, Esq., United States attorney; Summers Burkhart, Esq., assistant United States attorney; Charles H. Toll, and Charles H. Gildersleeve appeared on behalf of the United States.

Mr. REYNOLDS: I desire to have entered of record the fact that Mr. Charles H. Toll, of Denver, and Mr. Charles H. Gildersleeve, of Santa Fé, appear on behalf of the Government as assistants to the United States attorney.

The CHIEF JUSTICE: Their appearance may — entered of record as such.

41 WILL. M. TIPTON, produced, sworn, and examined on the part of the plaintiffs, testified as follows:

Direct examination by Mr. KNAEBEL:

Q. Mr. Tipton, please make a preliminary statement you have made in the other cases.

Mr. REYNOLDS: It is admitted that Mr. Tipton is fully familiar with the Spanish and Mexican archives and competent to testify as to their genuineness and originality, etc.

Q. Mr. Tipton, are you acquainted with the official signature of the alcalde mayor, Juan Antonio Cabeza de Baca?

A. Yes, sir.

Q. Are you acquainted with the official signature of Alcalde Mayor Antonio de Armenta?

A. Yes, sir.

Q. During the tenure of office by Bustamante, governor and captain general of the kingdom and province of New Mexico, who was the secretary of government and war in his office?

A. My impression is that there were several secretaries during his term.

Q. Name some of them or one of them.

A. The only one whose name I can recall is Antonio de Gruciaga, but I am certain that there was another. I cannot recall his name now.

Q. Are you acquainted with the signature of Antonio de Gruciaga?

A. Yes, sir.

Q. I wish you to look at this fragmentary document purporting to be a petition and a part of the granting decree relating to the lands in controversy here, and state, if you can, from your examination, what handwriting known to you appears upon it.

A. The only handwriting on this fragmentary document with which I am acquainted is that in which is written the note, the endorsement on the first page, and that portion of it which appears to be the beginning of a decree on the second page.

Q. And what is that handwriting which appears in that note and in that fragmentary decree?

A. In my opinion it is the handwriting of Antonio de Gruciaga.

Q. We offer that in evidence as Plaintiffs' Exhibit Number One.

42 Mr. GILDERSLEEVE: Is that translated?

Mr. KNAEBEL: I offer it for identification as Exhibit No. 1.

Mr. GILDERSLEEVE: You do not offer it in evidence, then?

Mr. KNAEBEL: Not yet.

Q. Mr. Tipton, look at what purports to be a copy of the petition to the grant of the La Canada de Cochiti, and act of possession, authenticated by Juan Antonio Cabeza de Baca, and in looking at that examine the signature to the certificate as to the grant papers there referred to, and say whether or not that signature purporting to be the signature of the alcalde mayor, Juan Antonio Cabeza de Baca, in your opinion, is his genuine signature.

A. Yes, sir; in my opinion that is the genuine signature of Juan Antonio Cabeza de Baca.

Mr. KNAEBEL: I asked to have this document marked for identification as Plaintiffs' Exhibit No. 2.

Q. Now, Mr. Tipton, please to look at this document, bearing date in 1785, purporting to have been executed and signed by Antonio de Armenta, and state in whose handwriting the body of that document is, according to you- opinion, and also whether or not the signature there of Antonio de Armenta, at the foot of that document, is, in your opinion, genuine.

A. I think this signature is genuine, and the body of the instrument written immediately above it is, in my opinion, the handwriting of Antonio de Armenta.

Q. From your knowledge of the archives of the United States kept in Santa Fé can you state whether or not Antonio de Armenta and Juan Antonio Cabeza de Baca, in Spanish days, exercised the respective functions of alcaldes mayor?

A. I can in respect to Antonio de Armenta, but I am not acquainted with the functions exercised by Baca—that is, I have no

other acquaintance with his signature other than what appears on this paper.

Q. That is all.

Mr. REYNOLDS: I do not know but that the last question
43 and answer might be objectionable as not being the proper way to prove the official character of an officer, unless the foundation for it has been laid as secondary evidence, and I therefore object to the question and answer, based on the ground that it — not proper nor the best way to prove the character of the officer certifying the instrument.

Mr. KNAEBEL: The instrument itself proves that.

No ruling.

Mr. KNAEBEL: Your honors, please, there are, perhaps, thirty or forty papers, old instruments of conveyance, of lands in the Canada de Cochiti and outside of it, made under the Spanish and Mexican rule, each instrument being an ancient instrument and coming from the proper custody. I ask permission of the court and Mr. Tipton to leave these papers with him so that at his leisure, which may take two or three days, he can examine the signatures that are known to him and then state to the court the facts.

Mr. REYNOLDS: The rule of the court that was made last June, that triplicate copies of all instruments intended to be used in evidence should be filed before July 1st, that order was general and not special. No copies of these instruments have been filed, and we do not know what they contain. It is simply impossible for the employés of my office to do this work unless they are given time to examine these documents and note on them what they contain. We do not know what is in a single one of them, and unless they are recently discovered documents that will throw some light upon the questions in litigation I will not consent to their admission at this late day. Mr. Tipton has his hands full now and he cannot carry any more, and that is all there is about it.

Mr. KNAEBEL: We have gone to the expense of several hundred dollars, and I have been having them translated with the utmost difficulty. It was my understanding that counsel would waive all technical objections.

Mr. REYNOLDS: I am objecting to their introduction now because you did not give us an opportunity to see what they contain. I will take them, though, and see what can be done with them. Here, Mr. Flipper, take these and go through them and mark them.

44 Mr. KNAEBEL: I offer in evidence the documents that have been identified, with translations thereof.

The document signed by Antonio de Armenta is marked as Plaintiffs' Exhibit No. 3. I now offer these three in evidence.

Mr. REYNOLDS: These documents are produced from private hands and do not come from the archives of the Territory, as transferred from the Mexican government under the treaty, as being a part of the original Spanish and Mexican archives. These instruments were not produced from the archives of the surveyor gen-

eral's office. It does not appear that the custodian of them had any official capacity by law to become the custodian of the original, nor does it appear that the alcalde had any general authority to make the certificate in this manner so as to make the certificate competent in any tribunal, and therefore I object to the admission of these documents in evidence.

Mr. TOLL: We desire to make the further objection that the paper which purports to be a certified copy of the original instrument is not in truth a true copy of the instrument—of the fragmentary portions of the instrument—which is presented here as a portion of the original instrument from which it is claimed this copy was made, but is, as we are inclined to think, a copy attempted to be certified by the alcaldes and made from some other paper, which is probably a copy of the fragmentary paper which is presented here as the original.

Mr. KNAEBEL: I will first read to the court the translation of the fragmentary and mutilated testimonio offered in evidence.

Mr. TOLL: I wish to know whether you offer this translation in evidence.

Mr. KNAEBEL: It is offered provisionally, upon the understanding that any corrections that shall be made by the officials of this court *ex parte* by Mr. Tipton will be taken by us as being correct.

Mr. TOLL: I desire, then, to interpose the same objection to
45 this paper which was asked with reference to the two papers certified, that it is not a true translation.

The CHIEF JUSTICE: We will treat the objection to the translation as well as to the originals. We will take them subject to the objections and pass upon their admissibility hereafter.

Mr. KNAEBEL: I shall now read, if your honors please, as provisional evidence, the translations found in the files of the surveyor general's office.

Mr. REYNOLDS: Your honors please, this document which purports to be a copy of the original, which we claim is not the original, but a copy made by the secretary, and I want to call the court's attention to the document from which this document is copied, made from a document which itself shows on its face to be a copy; in other words, it is a copy of a copy.

No ruling.

Mr. KNAEBEL: We offer in evidence, provisionally, the testament, copy of the testament, ultima voluntad de Francisca Jaramillo, copiado fielmente del original, dated January 24th, 1755. The original is in the hands of Felipe Sandaval, of Peña Blanco, New Mexico—Plaintiffs' Ex. No. 4.

At this point an adjournment was taken until two o'clock p. m.

At two o'clock p. m., pursuant to adjournment, the following proceedings were had—same day, September 21st, 1894:

Mr. KNAEBEL: Mr. Reynolds, if you have no objection, I would like to offer the record of proceedings in the matter of the forfeiture

of Andres Montoya grant, the papers which you have submitted in another matter, and which we will mark Plaintiffs' Exhibit No. 5.

Mr. REYNOLDS: The Government has no objection to the introduction of that document.

Mr. KNAEBEL: I wish also to read the evidence of some witnesses taken before the surveyor general in the matter of this claim, who have died since their examination, and merely for the purpose of proving their death I will call Mr. Sandoval to the stand.

46 FELIPE SANDOVAL, of lawful age, being produced, sworn, and examined, upon his oath testified on the part of the plaintiffs as follows:

Direct examination by Mr. KNAEBEL:

Q. State your name, age, residence, and occupation.

A. My name is Felipe Sandoval; I am sixty-six years old; I reside at Peña Blanca; my occupation is farmer.

Q. Were you one of the witnesses examined before the surveyor general in the year 1882 upon the investigation of the Canada de Cochiti grant claim?

A. I was.

Q. Were you personally acquainted with Mariano Salas, one of the witnesses examined upon that investigation?

A. I know him. He was examined at the time that I was examined.

Q. Is he living or dead?

A. He is dead.

Q. Were you acquainted with Jesus Maria Cabeza de Baca, a witness examined before the surveyor general on that investigation?

A. I knew him.

Q. Is he living or dead?

A. He is dead.

Q. Were you acquainted with Juan Lopez, a witness examined before the surveyor general on that investigation?

A. I knew Juan Lopez.

Q. Is he living or dead?

A. He is dead.

Q. That is all.

Mr. REYNOLDS: That is all.

Mr. KNAEBEL: For the purpose of corroborating the testimony of Mr. Tipton as to the signatures and official position of Alcalde Mayor Juan Antonio Cabeza de Baca, I desire to read to the court the depositions, taken before the surveyor general in the mattter of this private land claim, of witnesses who made and signed these depositions, who are now dead, and I will first read the deposition of Mariano Salas, taken before the surveyor general on July 21st, 1882, marked reported No. 135, file 95; in red ink, 6; also I wish

47 to read the deposition of Jesus Maria Cabeza de Baca, taken before the surveyor general on August 17th, 1882, marked file 95; in red ink, 8; also I will read the deposition of Juan Lopez,

taken before the surveyor general on the 18th day of August, 1882, marked file 95; in red ink, 8; also I wish to read the deposition of Mariano Salas, recalled, taken before the surveyor general on September 22nd, 1882, marked file 95; in red ink, 8—Plaintiffs' Ex. No. 5 B.

Here counsel read in evidence the said depositions.

WILLIAM HARRIS, a witness produced, sworn, and examined on the part of the plaintiffs, testified as follows, on direct examination by Mr. Knaebel:

Q. State your name, age, residence, and occupation.

A. My name is William Harris; my age is thirty-three years; residence, Allerton, New Mexico; occupation, mining engineer.

Q. Are you also a land surveyor?

A. Yes, sir.

Q. Look at the diagram on this blackboard, intended to show on the east the Rio Grande, on the west the Canon de San Diego, on the south the line of the provisional government survey of the Canada de Cochiti grant, and the north line of that survey on the north, and in red chalk, upon the border of the white, lines the canons of Capulin and Los Frijoles, and say what, if any, acquaintance you have had with the country indicated upon that map and that diagram.

A. I am acquainted with that part of the country, having surveyed over it.

Q. Look at the photograph now shown you, which I offer as Exhibit No. 6, and state whether or not that is approximately a correct representation of the country in and about the locality exhibited on this diagram on the blackboard.

A. I think I recognize it as the view, looking westward, of that country.

Q. Look—what is the sierra or mountain range which appears in the background of this photograph, shown on the sky line?

A. It is apparently the high portion of the mountain between the Peralto cañon and the sierra that runs by the Jemez river.

Q. Do you know how that range of mountains or that sierra runs—north to south?

A. Generally north and south—northerly and southerly.

48 Q. What is the character of the country, topographically speaking, from that sierra, as shown on the photograph, easterly to the Rio Grande?

A. Well, it is principally a mesa—a mesa split by cañons, with an occasional peak.

Q. Have you been over the land in controversy in this case with a view of indicating by survey and map the location of the Pueblo Viejo de Cochiti and other points?

A. I have.

Q. Have you made a map showing the results of your work in that particular?

A. I have.

Q. Please produce that map.
A. I think it is the map lying there on the table.
Q. Is this the map?
A. That is the map.
Q. Do you know whether or not that map is reasonably accurate?
A. It is, to the best of my knowledge, accurate.

Mr. KNAEBEL: We offer this map in evidence as Plaintiffs' Exhibit No. 7, marked Map of the Canada de Cochiti, Bernalillo Co., New Mexico, Sep. 15, 1894—scale, 3,000 ft. to 1 inch—surveyed and drawn by William Harris, M. E.

grant*

Q. Upon this map what is the—what does the red line to the left hand indicate?
A. It indicates the general trend of the divide between the mountain and the Peralta canon.
Q. How do the waters here flow?
A. East of this divide the waters flow into the Rio Grande—south and east.
Q. How do the waters flow that come from the other side?
A. They flow into the Jemez—the Jemez valley.
Q. What is the point which I now show you, which is marked Pueblo Viejo, between the cañon near the point of the Cuesta Colorado?
A. It is the location of an old ruin built of stone.
Q. What is that old ruin called?
A. The only information I have concerning that was what we acquired of the companions on the survey—the Mexicans—who called it Pueblo Viejo.
Q. Give the names of those Mexicans that accompanied you on the survey.
A. Zenon Sandoval, Jose Antonio Sandoval, Francisco Sandoval, and Miguel Lucero.
49 Q. What is represented by the double line on the east of the map?
A. The Rio Grande.
Q. What, at the right lower corner of the map, is represented here by the marks where appears "Cochiti"?
A. It represents the present Indian village of the Cochiti.
Q. What is represented by the marks near this canada?
A. That is the present Mexican pueblo on the Canada de Cochiti.
Q. What is represented and appearing in a northwesterly direction from the Mexican pueblo—a mark or diagram and the words "ruined pueblo"?
A. That represents a ruined village, evidently.
Q. What is meant by the words "Canon de los Casas"?
A. It is a small arroyo near this ruined pueblo and running into the Cochiti pueblo, in the Canon de Cochiti, further down.

[* In pencil in copy.]

Q. Do you know the meaning of those words?

A. The cañon of the houses.

Q. Have you personally been up this Canon de Cochiti?

A. Yes, sir.

Q. Please to state how far up and down that cañon you saw evidences of habitation and cultivation.

A. Starting from the present pueblo——

Q. You mean the Mexican pueblo?

A. On the small mesa near that, going northwesterly along the line of the cañon, there was some.

Q. Good many?

A. Yes, sir; and then up to the northwest, beyond forks of the Canon Medio Dia, there is a place th-re in that neighborhood of a small ruin—evidences of a ruin.

Q. Which fork?

A. On the eastern fork of the main Cochiti.

Q. Were there any acequias there for the use of the Mexicans settlements?

A. Well, the present acequia is taken out a little below the boxes of the cañon and taken on the north side of the river.

Q. Well, describe the habitations you have seen or the vestiges of habitations you have seen in the upper part of this Canon
50 de Cochiti.

A. I saw nothing further than square blocks of stone in squares and quadrangular forms on the ground. They were just sort of a foundation; apparently very old.

Q. Did you find any trees growing in these foundations?

A. There is one enclosure there that has one pine tree growing in it.

Q. How large was that pine tree?

A. Perhaps 18 to 20 inches in diameter.

Q. Describe the canada indicated on this map as the Canad- el Medio as far as it extends to the north and west—the bottom of the canada.

A. The Canon el Medio takes its source near the group of mountains at a place called Picacho. It is a group of mountains. It is rather of an open cañon; some very good grazing there.

Q. Describe that grazing. Please to indicate where that good grazing is.

A. There is good grazing there up to here (indicating on map).

Q. Up to where?

A. All over this tract indicated here. (Indicates parts of Canada el Medio as laid down on map.)

Q. Does that Canada el Medio go up there?

A. No, sir; it rises here; it does not come up to that vicinity.

Q. That is where you have marked grazing?

A. Yes, sir.

Q. How far down does good grazing continue on that canada?

A. Well, for quite a ways down; apparently the grazing disappears gradually as we go near the river. It does not seem to be such good grazing below.

Q. Describe the character of the country as you proceed westerly from the Canada de Cochiti to the sierra upon which this divide is made in red ink.

A. It is very similar to the other country—very rough—divided with mountains and covered with timber, and on the flat of the mesa, wherever there is any soil, it is very good grazing country.

Q. Will you please indicate to the judges upon the photograph the country that extends westerly from the Canada de Cochiti to the sierra—to that line of mountains on the west?

51 A. That included in the right hand—the central—on the right-hand portion of the map of the photograph is the portion that I examined.

Q. Well, now, describe that.

Mr. REYNOLDS: Is that the middle of the 4th section of the photograph?

A. From the center of the map it is rather hard to put on anything here. The whole sky line from section 2, including 4, is apparently the divide. It is the same view that is on the map. It shows the same.

Associate Justice SLUSS: Is that the continental divide, Mr. Harris?

A. I could not judge that, not having been to it. It is the highest divide there in that country. I could not say, though, whether it is the continental divide, not having been to it.

Q. Mr. Harris, describe the locality in which the Mexican houses that you have marked "Canada Pueblo" are situated; then proceed to describe the place at which you marked ruined pueblo is situated.

A. The Mexican pueblo, the Canada de Pueblo, as it is called, is on a low mesa between the Canon de Los Casas and the Cochiti canon, and it is a continuation of the mesa that lies between Pino canon and Cochiti canon, only very much lower.

Q. This is the Pino canon (pointing on the map) and this Cochiti canon (pointing on the map)?

A. Yes, sir; as you travel westward and northwest from the Mexican pueblo you come upon a very steep bluff there. As appearing on the trail over it, it is very precipitous, and there is a mesa there that is considerable higher than the one upon which the Mexican village is now. In these precipitous bluffs there are excavations in which appeared to be dwellings at one time.

Q. What are they reputed to be?

A. Cliff-dwellers, supposed to be.

Q. Describe fully to the court the appearance of the ruined pueblo on this mesa.

A. It is composed of space in a rectangular form of about
52 two hundred feet long and I should judge from fifty to one hundred feet wide, surrounded by double row of rooms. These rooms are generally several feet high, some of them four, and divided thus rectangular in form. In the center there is another row of buildings, and this central divided row is in the best state of preservation. One of the rooms shows the old logs five or six feet

long. There are a few of these old wooden logs remaining in the adobe and stone walls, plastered with adobe.

Q. Did you find any vegetable substance that appeared to have been used by man?

A. I saw nothing beyond cactus growing there.

Q. Did you see any corncobs?

A. There are burnt cobs there and burnt corn in profusion there.

Q. Did you see any pottery lying about?

A. No; no pieces of any size; there were small broken chips or portions lying around.

Q. Now, describe to the court the sides of this bluff or mesa. I am calling your attention now to the defensive points.

A. It is located very nearly the center east and west of the portion of the middle mesa; I am speaking of the middle being the last and highest.

Q. Is that defense between this mesa and this one?

A. Yes, sir; it is on the middle steppe and nearly the center of the bluff going down the slope down in the Cochiti canon. The whole face of that mesa to the north and the south and southeast is very precipitous, indeed; quite high; it is almost impassable, and even the appraoches to it over the trails are very rough, very hard to climb; the western boundary of it is a very sharp bluff coming over the steppe of the mesa, so that it is enclosed by almost a continuous line of precipitous cliffs.

Q. Sort of a natural fortress?

A. It is, indeed; yes, sir.

Q. Now, state whether this ruin on that mesa showed any vestage of plaster.

A. Frequently some very well preserved plaster on this main cross-section through the center *ter on this main cross-section*

53 *through the center.*

Q. On the interior or exterior?

A. The interior.

Q. Now, describe to the court the state and appearance of what you have marked on this map Pueblo Cuesta Blanca, at the junction of the San Miguel canon and the Canada el Medio.

A. It is very similar in appearance to the others; I did not visit that upon the immediate ground in person, but on the western side it had every appearance of a tumble-down village, Indian village.

Q. Now, coming to the mesa which you have marked on the map Pueblo Viejo, situated to the southeast of the Cuesta Colorado, as laid down on this map, give to the court as short a description as you can of the situation and appearance of that ruin.

A. It comprises a space very nearly in the form of a square; it has no division through the center at all, and it is formed of stone, probably two feet high from the ground; there are a great many scattered stones over the trail leading to it from Canon Capolin, up by that bluff marked Cuesta Colorado, and from there to the eastward over the pueblo, and there is another trail coming up from Canon Capolin further to the southeast.

Q. Here (pointing to some unknown spot on the map)?

A. Yes, sir; crossing that mesa, that creek, that small arroya, and this over to the pueblo, and it has every appearance of having been a habitable one.

Q. State whether or not this ruined pueblo bear- the appearance of being quite antiquated.

A. It does.

Q. Give your reason for that statement as found by actual visible appearances there.

A. There are very few traces of old plaster left there; the walls are very nearly all gone; the walls are not over two feet, possibly three feet, high in any place, and the stones that composed the walls are worn round wherever they show to the weather; the trail-leading to it over the different directions are worn smooth in the solid rock from the footsteps, evidently, and a large tank at one corner outside of the enclosure, for what purpose I cannot
54 say, but there is a large juniper tree growing out of the center of it.

Q. What was the diameter of that juniper tree?

A. Probably two feet or two fert and a half.

Q. Are you acquainted with the growth of such trees as to give an opinion as to the probable age of that juniper tree?

A. No, sir; I have no idea of the age of it.

Q. Did you see any ancient "footprints in the sands of time" there?

A. I saw a very peculiar thing there. I might call it a formation; I do not know what else to call it; but on this trail between the south fork of the Canada del Alamo and the main fork on the mesa slope.

Q. Describe to the court what you saw there.

A. There is an old trail there, evidently an old trail along there. My attention was called particularly to a portion of that trail that goes there and in the solid crystal rock, resembling very much the rock of that district. There are footprints, probably two or two and a half inches wide and about two inches deep, of bare feet, and we counted six or seven of these footprints in the rocks.

Q. How many?

A. Six or seven.

Q. Native?

A. Yes, sir; evidently children's footprints.

Q. Did you see any more bare feet there?

A. Yes, sir; there was one imprint of a bear's foot right along the children's foot imprints and imprinted about an inch in the solid rock; it was a light imprint.

Q. Could you make an estimate of the age of those rocks?

A. I would not attempt any such estimate as that.

Q. Now, proceed to describe the topography of the country immediately contiguous to this ancient ruin that you have marked Pueblo Viejo.

A. The country immediately surrounding that old pueblo is a country to the northwest of gentle slopes, rolling country, and also

to the westward; to the eastern side, rather steep declivity, but rather rocky soil, sloping to the southwest. The edge of the mesa there is a low bluff, from ten to twelve or fifteen feet. It is not a high declivity at all, and the trails passing over the cañon,
55 foot trails, are in rather rolling country.

Q. Does it appear as having been selected as a defense in the sense the other ruins near Canada de Cochiti appear to have been selected?

A. Well, I should think its only source of defense would have been its natural position; an inaccessible retreat.

Q. How is the pasture to the north and south of the mesa upon which the Pueblo Viejo is situated?

A. I did not examine it to the northwest of there, only as I got it from others, but very fair grazing around that neighborhood; very good grazing.

Q. In conclusion, I desire you to inform the court what means you employed in fixing the various localities to which you have referred in ascertaining their location and the courses of the several cañons laid down there.

A. I started a survey from the United States Government's monuments upon section corners, and, with an instrument, run lines across, scaling the map to the northeast of it, and when I passed a cañon I enquired the name of it from the guides, took the course of the cañon and mesas and run northeast, and would mark those same cañons at different points, and take their course at each time, notice the topography of the country as I passed through it, and posted in my sketch book the places upon the map when I went home. In places where I could not conveniently make an ordinary survey I used to plat the work upon a temporary map and copied it onto this.

Q. Your guides to whom you last referred, were they the same Mexicans that attended you to the Pueblo Viejo?

A. After locating the Pueblo Viejo I excused two of the guides and retained only two of them.

56 Cross-examination by Mr. REYNOLDS:

Q. Mr. Harris, where did you start to make this map; where are the Government's monuments located on this map? Have you got their description, the notes of your survey, township, range, etc.?

A. I have; it is the western quarter section—sections 22 and 23 of range 17 north, township 17 north, range 5 east.

Q. Now, can you tell me from that point how far it is to the point of the mesa upon which the ruins, the group of ruins, you have designated here the ruined pueblo, which is northwest from the place that you have marked Canada Pueblo?

A. Do you wish that distance?

Q. Yes, sir.

A. I do not remember the distance myself; I could scale it very easily from the map.

Q. Well, give it to me approximately.

A. The map is a scale of three thousand feet to one inch. I should say it was between two thousand five hundred feet to three thousand feet. It measures two thousand feet by the scale approximately.

Q. Do you know how far it is from that beginning point from which this survey was made directly east to the Rio Grande river?

A. No, sir; I never run a line directly east to the Rio Grande river to measure it; never run over that course.

Q. How far is it from the point of the mesa upon which you marked ruined pueblo directly east to the Rio Grande river; do you know how far it is, about?

A. I think, as I remember, in the neighborhood of six miles—between five and six miles. I did not run these particular lines. I could give them to you approximately by scaling them there.

Q. Now, how wide is the Canada de Cochiti at the mouth of the canada, where this mesa upon which the ruined pueblo is situated?

A. I do not understand.

Q. From northeast to southwest?

A. Well, I cannot possibly give you that; I never measured it. The lines of the topography shown on that map are approximate. I could not exactly give that.

57 Q. In other words, the topography of the map is only made relatively and not mathematically correct?

A. Yes, sir.

Q. You have laid down these cañons—have you laid them down by scale?

A. Not entirely; no, sir; I connected different points when crossing these different cañons with the points where I did cross them to get them approximately correct.

Q. Do you know how far it is, then, from the ruined pueblo on the south that you have marked here to the pueblo you have described, Pueblo Cuesta Blanca?

A. By direct air line I do not. I have the notes, memorandum that I run from one to the other through that country, but the map shows that; the scale will give that.

Q. Is that a correct scale of this map, three thousand feet to one inch?

A. Yes, sir; the scale will give you very close to the exact distance on the ground.

Q. Take the scale and give the distance between this ruined pueblo and the other one on the northern line you have marked Pueblo Viejo.

A. The distance from the ruined pueblo near the Mexican pueblo, at present, to the pueblo marked Cuesta Colorado, is a distance of eighteen thousand feet.

Q. Now, give the distance from the Pueblo Cuesta Blanca to the Pueblo Viejo in an air line.

A. Distance of seventeen thousand five hundred feet.

Q. Now, give in an air line the distance from the pueblo called

the ruined pueblo to the Pueblo Viejo, which you have described as the upper or northern pueblo.

A. Thirty-four thousand feet.

Q. Can you draw on the map in pencil by that scale the northern line of the Pueblo Viejo to the present pueblo of Cochiti?

A. I cannot, sir; I do not know any of the corners.

Q. In making this map, you did not make it with reference to the boundary, the northern boundary of the present pueblo of Cochiti?

A. No, sir.

Q. You then do not know where the northwest corner of the present pueblo of Cochiti would be on your map?

58 A. I do not know.

Q. The pueblo that you call the "ruined pueblo" is situated south of the *the* Cochiti canon, is it not, and adjacent to it?

A. Yes, sir; southwest.

Q. The mesa upon which that ruined pueblo is situated is divided by an arroyo between the Canon Cochiti and the Canon de los Casas, isn't it?

A. Yes, sir.

Q. It comes from the south side of the Canon Cochiti, doesn't it?

A. Yes, sir.

Q. Commencing at the Rio Grande river, how far back from the river do you go there on the first bench of the mesa to distinguish it from the river bed?

A. I have no idea, sir. The different steps referred to elevations from the Canon Cochiti and not from the river.

Q. Commencing at the foot of the mesa upon which you have described the ruined pueblo, it is a long slope down to the Rio Grande river, isn't it?

A. Yes, sir; a gradual slope down towards the river.

Q. The country through which the stream runs—the stream that comes down the Canada de Cochiti—there is quite a considerable amount of agricultural land, isn't there?

A. Yes, sir.

Q. Rather fertile?

A. Apparently so; yes, sir.

Q. To draw a line east and west through the ruined pueblo, as you have marked it on this map, would take in most of the agricultural land, wouldn't it?

A. Yes, sir.

Q. Now, how much—what is the area to a point of the first bench of the mesa upon which you have described the ruined pueblo back to the second bench?

A. I do not know.

Q. Is that ruined pueblo on the next steppe?

A. No; only the present Canada pueblo—only the Mexican village—which I have marked.

Q. In other words, the Canada pueblo?

A. Yes, sir.

Q. Is that on the mesa that extends towards the Rio Grande river to the east?

A. It is on the slope.

59 Q. That is agricultural land, is it not?

A. No, sir; that is not agricultural land; the agricultural land is north; that is arid land and sand hills down in here; that is formed, I should think, by the generation of the water itself; it is a low mesa.

Q. The generation that you have reference to is the generation that comes down the Canada de Cochiti, just back of the ruined pueblo?

A. And also washes down from the sides out to the river bed.

Q. It seems to form one continuous drainage from the mountains, does it not?

A. Yes, sir.

Q. Now, taking the point of this mesa, upon which you have located the ruined pueblo, isn't there just back of it an abrupt ascent for seven or eight hundred feet high, almost rocky walls?

A. As to the height I am not sure, but there are very abrupt walls back of it.

Q. And considerable higher?

A. Yes, sir.

Q. Then, when you go southeast from the bench of the mesa upon which you have located this ruined pueblo you step down to the edge of a much lower mesa and extending to the Rio Grande river, don't you?

A. Well, no; that small mesa at the foot of that abrupt descent, so apparently low, reaches between the Canon de los Casas and the bed of the Cochiti canon and extends down for some little distance and gradually slopes to the level of the water, but at the point where this Mexican pueblo is located it is an elevation of probably forty to fifty feet to the water level.

Q. In other words, it is rolling?

A. Yes, sir.

Q. Rolling here between the Cochiti canon and the Canon de los Casas and the Pino canon?

A. Yes, sir.

Q. Did you examine this bench or mesa upon which you have located the ruined pueblo for more than one ruin?

A. No; it is one complete ruin.

Q. Isn't there several over there?

A. Not that I know of.

Q. The only ruins on top of that mesa is the ones you have described as being the home of the cliff-dwellers?

A. Yes, sir.

60 Q. Now, did you notice in going up the trail upon this bench—upon which you have marked the ruined pueblo—did you notice any steps that were worn, as if they were worn by ancient use?

A. I could not go up on that mesa; around it, but not up on the mesa.

Q. I am speaking now with reference to the trail being there on the mesa you have described as the ruined pueblo. Did you find any trail that had been worn, as if by ancient steps—ancient usage?

A. It was worn; yes, sir, considerably; quite a distinct trail.

Q. Worn by steps—ancient usage?

A. I never saw any worn in the stones except the trail, scattering, but unevenly worn.

Q. It would form a very defensible position from incursions—from attack on either side?

A. Yes, sir.

Q. Now, take the cañons you have designated on this map; the one next to this mesa is the Pino canon, is it?

A. Yes, sir.

Q. What is next below that?

A. Next is the Peralta canon, but higher up in the mountains, between the Pino canon and the Peralta canon, is the Colla canon.

Q. Well, it extends up north very much farther?

A. Yes, sir.

Q. And then what cañon is that up northwest?

A. La Jara canon.

Q. What is the first cañon north of the Cichiti canon?

A. Canada Jose Sanchez.

Q. Next?

A. Canada el Medio.

Q. Next?

A. San Miguel canon.

Q. Next?

A. Canon Colorado.

Q. Next?

A. Canon Capulin.

Q. Now, with reference to the Canon Capulin, how is the Pueblo Viejo located?

A. Well, from a po-nt on the Canon Capulin, near the red line on the map, it is very nearly due east.

Q. The Pueblo Viejo falls between the Canada del Alamo
61 and the Canon Capulin, as you have designated it on this map?

A. Yes, sir.

Q. The next cañon on the east of the Canada del Alamo is what?

A. The Canon Rancho, a fork of the Canada del Alamo.

Q. The cañon as finally given is what?

A. Canon Frijoles.

Q. Now, what is the distance between the Canada del Alamo, as a distinct cañon, and the Canon Frijoles, as a distinct cañon?

A. I could not possibly state the exact distance.

Q. Now, take that photograph and mark on it these various cañons by figures, designating them on the photograph. To save time you can do that afterwards.

A. (Witness takes photographs to mark them.)

Q. Now, the general trend of these cañons to the Rio Grande river is from west to south?

A. Yes, sir.

Q. Did you follow the Pino canon to its source?

A. No, sir.

Q. You do not know whether it makes an intersection at any place with the Peralta canon, do you?

A. Not that I know of; no, sir.

Q. Do you know what is the Peralta canon's source?

A. No, sir; I did not go clear up to the head of it.

Q. Now, commence where the first mesa from the Rio Grande river springs abruptly up; is the distance between the Pino canon and Cochiti canon about six miles from the river?

A. Yes, sir.

Q. On that first abrupt break is situated the ruined pueblo, as you have located it here between these two cañons, then back of that is another abrupt break, with a mesa on top?

A. Yes, sir.

Q. Have you any idea of the area and extent of land on top of that bench on which you have located the ruined pueblo before you start up the other break?

A. I never estimated it.

Q. Can you give approximately the space?

A. Probably forty acres, possibly one hundred acres.

62 Q. Were you on top of the mesa back of it?

A. No, sir; not at this lower point, I was not, which is farther up the cañon.

Q. This country back from the Rio Grande river, getting farther away as you go west, is all broken and mountainous country, is it not? It is broken into small and large mesas, mountains, and peaks?

A. Very few mountains and peaks. I have indicated what I have come in contact with.

Q. On that photograph, on the line of mountains or hills, or whatever you choose to call them, commence at the right-hand side of the photograph as you go down the river—what is that line of mountains or hills just this side of the sky line on the west?

A. The dark lines at the right hand are peaks, very sharp peaks. The point marked Picacho on the map is a very sharp peak.

Q. Those peaks extend all the way down, don't they?

A. No.

Q. The range continues down?

A. I do not consider it a range, but individual peaks.

Q. Individual peaks?

A. Yes, sir; because a range has cañons cutting clear through them.

Q. Do you know where any cañon cuts through the Jemez range?

A. I am not acquainted with the Jemez range.

Q. Did you examine where the Peralta canon makes almost an abrupt turn west and goes through the Jemez range?

A. No, sir; I did not go that far north. I did not know that any sich has existed.

Q. You were informed as to the names of the places of these various localities you obtained from those Mexican- who accompanied you?

A. Yes, sir.

Q. Have you any personal knowledge of the names of the various points that you have designated except from what those people stated to you?

A. Except those in the Pino canon; beyond that it is the only information given me by the guides.

Q. Now, the Pino canon. Did you go far up the Pino canon?

63 A. I went from one section corner there up to the forks of the cañon, the upper fork.

Q. Up here?

A. Yes, sir.

Q. What is the character of the cañon with reference to abruptness?

A. It is very abrupt on the southeast side.

Q. What is the distance from the bottom of the cañon to the top of the mesa, an average height?

A. Probably five or six hundred feet.

Q. This Peralta canon, southwest of the Pino canon, also southwest from the ruined pueblo; what is the character of that cañon with reference to abruptness?

A. That is even more so than Pino canon.

Q. Now, as to the Peralta canon with reference to appearance?

A. Very similar in appearance to Pino canon.

Q. Now, with reference to the cañon you have laid down here as Canada Jose Sanchez?

A. It is very abrupt; as I have given it on the map it is very abrupt.

Q. With reference to this cañon you have described as Canada el Medio as to abruptness?

A. There are places where it is very abrupt; on the west there is a gradual descent.

Q. Now, were you up to the Canon Colorado? How about that?

A. That is also a square, vertical wall.

Q. What is the height of that wall?

A. I am not sure; several hundred feet.

Q. Now, the Capulin canon?

A. That is small and very abrupt.

Q. As you come on towards its mouth—point it out on the map—doesn't its mouth look like semicircle?

A. It has a good deal appearance of that; there are rocks, more rocks than Jose Sanchez; it is a small cañon.

Q. Did you go to Canon del Alamo?

A. No, sir; it is farther north than Capulin canon.

Q. You would identify the Canon del Alamo if you saw it?

—. I should.

64 Q. If you were to go up there to make an examination could you identify it from most other cañons?

A. I should be liable to do so.

Q. You located those cañons simply from information given you?

A. I located them from actual fixed points and from general information as given me by the Mexican residents.

Q. But if you were sent out without these people to inform you, could you locate these points in the absence of others, your conclusion would be that that was the Canada del Alamo?

A. That would be the natural inference; yes, sir.

Q. Now, you spoke of some acequias on the Canon de Cochiti near the ruined pueblo, as you have designated it on the map. Were there any evidence- of cultivation?

A. I did not see any indications of cultivation beyond that designated as cultivated lands on the map.

Q. At the old pueblo of Viejo did you find any such evidences of cultivation and farming—irrigation—as you found down here, as you have designated on this map, at the old ruined pueblo, in the Canon de Cochiti?

A. No, sir.

Q. Is there as much country there that can be cultivated adjacent to the old Pueblo Viejo, as you have designated it, as there is near the old ruined pueblo in the Canon de Cochiti?

A. No, sir.

Q. Before you went to investigate this country and its topography did you undertake to inform yourself as to the history of that locality in any way?

A. No, sir.

Q. You know nothing about its history except as gathered from its people and their traditions?

A. Only what was gather- from the Mexican guides.

Q. All the information you had was what was given you by the parties who accompanied you on the trip?

A. Yes, sir.

Q. Have you any interest, directly or indirectly, in this grant?

A. Possibly indirectly; yes, sir; nothing direct.

Q. That is all.

65 *Q. That is all.*

Mr. KNAEBEL: Your mother owns an interest in it?

A. Yes, sir.

Mr. REYNOLDS: Can you indicate to me on that map the location of the present town of Allerton?

A. Approximately; yes, sir.

Q. Well, mark it for me, Mr. Harris.

A. It is here at that point. (Witness marks it on map.)

Q. Can you locate the present town of Bland?

A. Yes, sir; approximately. (Witness marks it on the map.)

Q. How long were you, Mr. Harris, in making this investigation?

A. I was twelve days in the field and two days and a half making that map.

Q. Twelve days out on the ground, were you?

A. Yes, sir.

Q. That is all.

Further direct examination by Mr. KNAEBEL:

Q. Going west from the Mexican settlement of Cochiti, passing from the Canon de Cochiti to Pino canon, what is the nature of the grounds between those cañons?

A. It is rolling; rolling topography.

Q. Grazing ground?

A. Well, there are evidence, slim evidence, of grass.

Q. Continuing on that westward line and passing there across the Pino canon south there along to Colla canon, what is the nature of the ground between the two cañons?

A. Passing over a very abrupt mesa from Pino canon to Colla canon.

Q. What kind of a country is there?

A. To the top of the mesa there is very good grazing.

Q. Still continuing on and along westward to the mouth of the Colla canon, what kind of a country do you pass before coming to Peralta canon?

A. Another very sharp, abrupt mesa.

Q. On top of it?

A. It is a very narrow mesa, comparatively level; there is grazing, but very little.

66 Q. Still continuing on the same western line until reaching the Peralta canon, cross the Peralta canon upon the same western line and reaching the La Jara canon, describe the country between the Peralta canon and the La Jara canon, whether mountainous or mesas, and what is the nature of it on top.

A. You pass through very abrupt mesas in all that country.

Q. And on top of the mesa there is grazing?

A. Yes, sir.

Q. Near the mouth of the La Jara canon is there a mesa or mountains?

A. The mountains in that neighborhood form a divide.

Q. The land consists of mesas and cañons the whole distance from east to west on this line indicated in red ink, does it not?

A. Yes, sir; but there are some mesas cut in two by cañons at intervals.

Q. Here, then, the mesa on the Canada de Cochiti might be considered as a table-land cut by cañons?

A. Yes, sir.

Q. That is all.

Mr. HOWARD: I would like to ask one question. Mr. Harris, where on this map is the Peralto peak; on which division of this map is it?

A. It would be in No. 2. It is between the Peralta canon and the Colla canon.

Q. That is all.

Mr. KNAEBEL: That is all.
Mr. REYNOLDS: That is all.

67 JOHN DIXON, a witness produced, sworn, and examined on the part of the plaintiffs, testified as follows:

Direct examination by Mr. KNAEBEL:

Q. Mr. Dixon, state your name, age, residence, and occupation.
A. John Dixon; residence, Pueblo de Cochiti; age, thirty-four years; occupation, carpenter.
Q. Where were you born?
A. At Pueblo de Cochiti.
Q. Are you a member of the Indian pueblo of Cochiti?
A. Yes, sir.
Q. Were your ancestors Cochiti Indians on your father's side?
A. Yes, sir.
Q. You were educated at Carlisle, Pennsylvania?
A. Yes, sir.
Q. Is your father living?
A. No, sir; he is dead.
Q. What was his name?
A. Isidro Pancho.
Q. How old was he when he died?
A. Well, he was—I don't know exactly, but he was over fifty years old.
Q. He lived all his life at the Pueblo de Cochiti?
A. Yes, sir.
Q. Did you know your grandfather?
A. No, sir.
Q. How many languages can you speak?
A. I speak the Indian language, Spanish language, and English.
Q. Of what nations was the Queres nation composed?
A. How many pueblos, you mean?
Q. Yes; what pueblos?
A. Cochiti, San Domingo, San Felipe, Santa Ana, Zia, La Guna, and Acoma.
Q. Did they speak the same language?
A. They all spoke the same language.
Q. Is the language spoken by the pueblos of the Jemez nation the same or different from the language spoken by the pueblos of the Queres nations?
A. It is different.
Q. Ordinarily, can the Queres pueblos speak or understand the language of the Tanos pueblos?
A. No; they understand the Mexican and Spanish language.
Q. Do you understand the Tanos language?
A. Yes, sir.
68 Q. Do you understand the Queres language?
A. Yes, sir.

Q. When you were a boy did your father ever speak about the old pueblo of your nation?

A. Yes, sir.

Q. Did he ever take you to it?

A. No, sir.

Q. Did he ever tell you where it was?

A. Yes, sir.

Q. Look at this map and state whether or not you can show the location of the Pueblo Viejo de Cochiti, can you?

A. Yes, sir. (Points it out.)

Q. Describe the country about it.

A. This is a small arroyo or cañon, they called it, and all this country is a mesa.

Q. Describe the situation of the mesa or mesas on which the pueblo of Cochiti is situated with reference to adjoining cañons; just what directions in reference to adjoining cañons or southern points.

A. Well, this cañon runs into the Alamo the same way as this one, but about here, on the northwest, is another step or table-land, two mesas, Potreros de San Isidro.

Q. In the course of your life, from childhood up, have you ever heard the Pueblo Viejo referred to or spoken of by the old people?

A. Yes, sir.

Q. And in the traditions of your nation?

A. Yes, sir.

Q. What pueblo was referred to?

A. The Pueblo Viejo.

Q. It was the one that you have just shown to the court?

A. Yes, sir.

Q. Was it referred to by them as the Pueblo Viejo de Cochiti?

A. Yes, sir; all these Queres Indians.

Q. Of the Zia Indians?

A. Yes, sir.

Q. According to the traditions of your nations, was the Zias once in alliance—union?

A. Yes, sir.

Q. Can you point out the mesa, the cañon to which the Indians retreated after the rebellion?

A. Yes, sir.

Q. Please point it out on the map.

A. (Designates it at the ruined pueblo.)

Q. Is that so understood by your people?

A. Yes, sir.

Q. Can you state what the tract of land immediately north
69 of your pueblo lands, extending as far as the Pueblo Viejo and extending from the Rio Grande to the west, has been recognized and considered by your people?

A. I do not understand.

Q. Did you ever hear of a grant to the Luceros or to Antonio Lucero?

A. Yes, sir.

Q. When did you ever hear of a grant of land to the Lucero family?

A. When?

Q. Yes, sir.

A. Well, when I was a boy.

Q. Tell us what you heard on that subject from the old men of that tribe when you were a boy, on that subject.

Mr. REYNOLDS: I object to the question. This is not to prove the Lucero grant. It is purely hearsay, and it is not the way to prove the ownership of property and does not fall with- the exceptions to the rule of proving by tradition or hearsay.

The CHIEF JUSTICE: We will take it under the general rule.

A. I heard it was recognized as the Canada Cochiti grant.

Q. Recognized as the Canada de Cochiti grant?

A. Yes, sir.

Q. Do you know of your knowledge or by tradition of your people of the existence of any orchards on the Rio Grande planted by the Indians upon the lands of the Luceros?

A. Yes, sir; a little below where Canon de Cochiti stream runs into the river.

Q. Where the Canon de Cochiti runs into the river?

A. Yes, sir.

Q. And were the orchards planted by the Indians of Cochiti?

A. Yes, sir.

Q. Were they planted there under claim of right or with the consent of the Lucero family?

Mr. REYNOLDS: I object to the question, as at most it is but tradition or hearsay. I do not object to his showing the fact, but as to whether they claimed under right or how does not matter.

70 No ruling.

A. It is where monuments are.

Mr. REYNOLDS: I am objecting as to how they claimed it; whether they claimed to own it or not. I do not object to his establishing the fact as to where the orchards were planted, but I submit that he cannot prove by tradition or hearsay as to how they claimed to own it. I submit that the matter is worth considering.

The CHIEF JUSTICE: We will take it subject to this objection.

A. Well, at the same time the Indians claimed it as their right the Luceros claimed it. Then the Indians left that place.

Q. Can you state whether, according to the traditions of your people, they conceded the right of the Luceros *that* that grant of land?

A. Yes, sir.

Q. That is all.

Cross-examination by Mr. REYNOLDS:

Q. Are you familiar with the traditions of the Queres nation?

A. Yes, sir.

Q. Have you made it a study?
A. Not much.
Q. You have never investigated the home where you were born and resided and where your father was born and resided?
A. No, sir.
Q. How did you happen to know anything about the Queres nation?
A. After I was educated I took some interest in it.
Q. Did you know a man named Bandelier?
A. Yes, sir.
Q. Were you acquainted with him personally?
A. Yes, sir.
Q. Was he ever at your pueblo?
A. Yes, sir.
Q. How long?
A. The first time he stayed about over a year or two.
Q. When was he back again?
A. When he was back he did not stay long, but just a few days.
Q. Do you know whether he wrote a history of the Queres nation?
A. Yes, sir.
Q. That was his business there, was it?
A. Yes, sir.
71 Q. Do you know whether he travelled over that country?
A. Yes, sir.
Q. Did you ever accompany him in his travels?
A. No; I did not.
Q. You understood that he travelled it over, did you?
A. Yes, sir.
Q. His business was writing a history of the Queeres nation, was it?
A. Yes, sir.
Q. How many years ago was that?
A. Over fifteen years ago, I think. I do not remember very well.
Q. You said that one of those orchards that was claimed by the Indians was at the junction of the Canada de Cochiti with the Rio Grande river, and the Indians conceded their rights to the Luceros. You mean the Luceros were in possession of the land?
A. No; the Indians left that place.
Q. You do not know whether they conveyed it to them or not?
A. I do not know.
Q. How do you mean they conceded the right to the Luceros?
A. They admitted it.
Q. The fact that they did not go back there and make contention for it—that is, that was the extent of their admission?
A. Yes, sir.
Q. Do you know where the south boundary of that land is?
A. No; I do not know.
Q. Do you know where the north boundary is?
A. Well, I have heard by traditions the Pueblo Viejo.

Q. And they did not say what the traditions was as to the south boundary?

A. No.

Q. Do you know anything by tradition of any other Cochiti pueblo other than the one you have designated?

A. No, sir.

Q. Now, you have heard by tradition of a pueblo lying between the one to which the Indians retreated and the Pueblo Viejo?

A. Just only the one they retreated there to.

72 Q. Do you know by tradition the year the people of your nation were conquered and subjugated by De Vargas?

A. No; I do not know the year; but the last time they retreated up in the old ruined pueblo.

Q. Was that the pueblo the Indians retreated to when the Mexicans whipped them?

A. The last time; yes, sir.

Q. Well, the Pueblo Viejo is the pueblo of the Queres, is it?

A. Well, that is what they say.

Q. And the pueblo of Cochiti is the southern one, is it not?

A. Which one?

Q. Where you described the old ruins—the one to which the Indians retreated.

A. The last time the Cochiti Indians came to this place.

Q. That is the place you have marked ruined puebl-?

A. Yes, sir.

Q. Well, didn't they sometimes call that the Pueblo Viejo?

A. Well, that is what they say now.

Q. And that other one you have designated the Pueblo Viejo is to the north?

A. Yes, sir.

Q. This last one that is marked the ruined pueblo being the one that is known as the Pueblo Viejo de Cochiti?

A. They called it Pueblo de Cochiti.

Q. And Pueblo Viejo de Cochiti?

A. But the right name of that is Pueblo Viejo, and this is Pueblo de Cochiti they called.

Q. Designated as the Pueblo Viejo de Cochiti and Pueblo de Cochiti; both ways?

A. Because it had that old name by the people—the old Pueblo de Cochiti.

Q. All different ways they called it?

A. Yes, sir.

Q. Do you know where the Potrero de las Bacas is?

A. Yes, sir.

Q. Where?

A. It is here. (Witness points it out on the map.)

Q. That is all.

Mr. KNAEBEL, on further direct examination:

73 Q. Show me the Potrero de las Bacas.

A. (Witness points it out on the map.) It is northeast of the Pueblo Viejo, between the forks of the Canada del Alamo.

Q. You say you have heard the ruins near the Canada de Cochiti called Cochiti Pueblo, Canada de Cochito, and Viejo Pueblo Cochiti. Have you ever heard the ruins of the old pueblo called mostly anything else but the Pueblo Viejo de Cochiti?

Mr. REYNOLDS: I object, as this is not a witness that needs to be led. This witness is intelligent; does not need any one to lead him in questioning him.

The CHIEF JUSTICE: Well, you may ask that.

Mr. KNAEBEL: You understand that question without it being repeated?

A. Yes, sir; they called the Pueblo Viejo there sometimes Potrero de las Bacas. The Indians they called it by three names there—Pueblo Viejo, Pueblo Potrero de las Bacas, and——

Q. You said on your cross-examination that this ruined pueblo at the Canada de Cochiti is sometimes called the Pueblo Viejo de Cochiti?

A. Yes, sir.

Q. When did you hear it called Pueblo Viejo de Cochiti?

A. Always I heard it.

Q. How long; lately?

A. Yes.

Q. By the miners?

A. Not by the miners, but by the Indians.

Q. One hundred and sixty-five years seems a great deal of time to the young Indians of the present day.

A. That is what they called it.

Q. That is all.

Mr. REYNOLDS: That is all.

74 MANUEL HURTADO, a witness called, sworn, and examined on the part of the plaintiffs, testified as follows:

Direct examination by Mr. KNAEBEL:

Q. What is your name, age, residence, and occupation?

—. My name is Manuel Hurtado; I am going on sixty-eight years of age; I live at Cochiti; I am a farmer.

Q. State what, if any, official positions you have occupied under the laws of this Territory.

A. I was first constable of the precinct number one of the county of Santa Ana, and afterwards I was justice of the peace for two terms in the year fifty-nine, and, I believe, in the year sixty-six, also; in the years seventy one and two I was sheriff of the county of Santa Ana; in the years sixty one and two I was first lieutenant of militia, and during the years sixty three and four I also was first lieutenant of militia.

Q. In the war?

A. I have my credentials; yes, sir; these are the offices I have held.

Q. Are you a relative of the deceased Antonio Lucero, grantee of the Canada de Cochiti grant?

A. I am a great-grandson of Antonio Lucero.

Q. Give the names of some of the descendants of Antonio Lucero.

A. The descendants of Antonio Lucero were——

Q. I mean of those now living or who were living in 1882?

A. Do you mean those living?

Q. Give some names of descendants now living of Antonio Lucero.

A. Some of them live at Las Vegas, others live on the other side of the mountains, others at Conejos, others live on the Cuesta, others live here in Santa Fé, others live in Trinidad.

Q. Give the names of some of these descendants.

A. Here in Las Vegas live Jose Mero, the sons of Jose Manuel Lucero live; one of them, Rafael Lucero, he is now dead; another one, Fernando Lucero, I do not know whether he is living or dead. These people they live sometimes at La Cuesta. Another one is a female, Maria Lucero. I do not know whether she is living or dead.

Other times they lived at Chaperito; others of these that live
75 at Chaperito are the children of Jose, Francisco Lucero; also Domingo Lucero.

Q. Are there any Arragons among the descendants?

A. Yes.

Q. Give some names of the Arragon family.

A. One of them is Jose Arragon, another one is Francisco Arragon, another one is Bartolome Arragon.

Q. Was Eusebia Lucero of the family?

A. Yes.

Q. Do you know the names of his sons?

A. Jose, Francisco Arragon.

Q. Did you mention Manuel Arragon as one of the descendants on the wife's side?

A. His wife, Katharina ——, the daughter of Bet —— Lucero, is an heir.

Q. Give some of the names of the descendants of —— Lucero; just a few.

A. There are so many that I cannot give their names.

Q. Give us three.

A. The brothers of my father were Miguel Hurtado, —— Hurtado, Isidro Hurtado.

Q. Who was —— Hurtado?

A. She is a sister of mine; she is dead now.

Q. When did she die?

A. She dies about twenty years ago, on 22 day of October.

Q. Now, state whether you ever lived in the Canada de Cochiti; and, if so, when and how long.

A. I lived there from the day of my marriage, in the year forty-nine, when I got married, to the year seventy-six.

Q. Did your father live there before you?

A. Always.
Q. Did your grandfather live there before you?
A. He lived there and he died there.
Q. Did your great-grandfather live there before you?
A. Also.
Q. Live and die there?
A. Yes.
Q. How many of your relatives, descendants of Antonio Lucero, lived in the Canada de Cochiti and in that vicinity when you lived there?
A. About fifteen or twenty families.
Q. Do you know the boundaries of the land grant called the Canada de Cochiti grant?
A. Some of them; not all of them.
76 Q. How do you know what the boundaries of that grant are? Who has ever spoken about them in your presence?
A. My father told me something about that sometimes, and afterwards I saw the grant papers myself on various times.
Q. Where was your father when he spoke to you about the boundaries of the grant?
A. In the canada itself—in our own house.
Q. Is your father now dead?
A. He is dead.
Q. What did he tell you about the boundaries?

Mr. REYNOLDS: I object to the question. It does not matter what his father may have said about them. The boundaries of this grant are not indefinite. The grant papers declared on give the boundaries they are relying on. I do not want this witness to testify as to what his father told him were the boundaries of this grant. It is incompetent and immaterial.

The CHIEF JUSTICE: We will take it subject to the general rule.

A. My father would converse with my uncles and they would state what the boundaries were. He said that on the north it was the Pueblo Viejo de Cochiti; on the east, Rio del Norte river; on the south, the lands of the Indians of the pueblo of Cochiti; on the west, the point of the Jemez, the top of the mountains.
Q. Have you ever seen the Pueblo Viejo, which is on the north part of this grant?
A. I have seen three or four pueblos within the grant.
Q. I refer to the pueblo on the northern boundary. Have you ever seen that?
A. I have seen it.
Q. Who first showed that to you?
A. When I was a shepherd boy I saw it for the first time. I had my stock there on that ground. Nobody showed it to me.
Q. What cañons are in the vicinity of that old pueblo?
A. The Capulin is to the south; the Canon del Alamo *it* is to the north.
77 Q. Have you seen any monuments, old monuments, in that place?

A. Stone monuments, you mean?
Q. Yes.
A. No.
Q. Do you know where the Potrero de las Bacas is?
A. I do.
Q. Where is that situated with reference to the old pueblo?
A. The Petraro de las Bacas is up here northeast of the Pueblo Viejo, in the branches of the Canada del Alamo.
Q. What is a *protrero*?
A. It is a rocky steep; something like this house on the top of that steep is what we call the *protraro*.
Q. How long have the claimants of the Canada de Cochiti grant title occupied and pastured that land under their claim of right?
A. Always; since I arrived at the age of reason.
Q. How far up have the occupied them east and west?
A. That is on the north, to the top of the mountains.
Q. How long have you known them to occupy and pasture on the Canada el Medio?
A. Ever since I knew it; always pastured on it; it always has some stock in it.
Q. Have the heirs of Antonio ever established ranches in any of the other cañons of the grant, except the Canada de Cochiti?
A. Yes.
Q. In what ones?
A. They occupied a ranch at Rancho Viejo, where Don Lucero has his land.
Q. What cañon is that?
A. In the Canon de las Casas.
Q. In what is called Pino canon today by the Americans?
A. Yes; Domingo Lucero, the brother of my grandmother, always had his ranch there.
Q. Well, what others—what other cañons—did they occupy with ranches?
A. In the Canon de Capulin; also at a place called Rancho de las Utes, about the peak on the other side, where some of the heirs of Antonio Lucero had ranches, and their names are as follows: Antonio Lucero, Francisco Lucero, and Jose Lujan Lucero.
Q. What other brothers of Lucero occupied ranches in the cañons?
A. In which cañon?
78 Q. In any of the other cañons outside of the Canada de Cochiti?
A. They had them in all the cañons. They had goat ranches, and they moved from one place to another.
Q. How long have you known the heirs of Antonio Lucero to occupy these lands in these cañons under claim of their grant title?
A. Even as late as seventy one and two they had goat ranches.
Q. How far back can you recall they had goat ranches in these cañons under their claim of title?
A. All the time they had their own property and they had their cows.

Q. How far to the north did they have those ranches in the cañons—ranches of sheep and cows—under claim of their title?

A. From that place that is called Cuesta Colorado, near the old Pueblo Viejo, and over the mountains; sometimes one place, sometimes another.

Q. Did you hear the testimony of John Dixon?

A. I did not. I do not understand English.

Q. What, if anything, do you know respecting orchards planted by the Indians at the junction of the Canada de Cochiti and the Rio Grande?

A. I have seen the stumps of trees there at a place where the cañon joins the Rio del Norte.

Q. Do you know who planted those trees?

A. I do not. The people said the Pueblo Indians.

Q. Who stated that? Did the heirs state it?

A. The old people; my father said it.

Q. Were you told by the old people how those trees came to be planted there?

A. By permission; by a person by the name of Lauriano Lucero.

Q. One of the heirs of Antonio Lucero—his son?

A. He was the son of Antonio Lucero. He had no children.

Q. He left no children?

A. No; he was never married.

Q. How many children did Antonio Lucero have, according to the tradition of your family?

A. You mean the grantee?

Q. Yes.

A. Antonio Lucero, Cristoval Lucero, Ignacio Lucero, Miguel Lucero, Martin Lucero, Lauriano Lucero, and Maria.

79 Q. Of these children what ones died without descendants?

A. Only the one that I say—that is, Lauriano.

Q. Now, with reference to the agricultural lands in the Canada de Cochiti, how far up the cañon have the descendants of Antonio Lucero had habitations and fields?

A. About the distance of two miles from that place, above the cañon, is where we planted some beans; at the place where the Canon el Medio and the Del Norte river come together.

Q. Look at this map, at the point indicated at the junction of the Canon Media Dia and the Canada de Cochiti. Is that the place?

A. At that place is the particular place where they always planted.

Q. Did they plant beans there in your childhood, on the claim of their grant title?

A. Yes.

At this time an adjournment was taken until tomorrow, September 22nd, 1894, at ten o'clock; so declared by the chief justice.

Pursuant to adjournment, on September 22nd, 1894, at the hour of ten o'clock a. m., the following proceedings were had in the above-entitled cause:

MANUEL HURTADO, on cross-examination by Mr. Reynolds, testified as follows:

Q. You say you were born at the Canada de Cochiti?
A. Yes.
Q. Do you know where the Potrero Capolin is?
A. Yes.
Q. Do you know where the Potrero Vacas is?
A. Yes.
Q. Do you know where the ruined pueblo of an Indian pueblo is on the point of a mesa near the Canada de Cochiti?
A. Yes.
Q. Is that the pueblo to which the Indians retreated at the time of the conquest by the Spaniards?
A. Yes; I have been informed it was during the last conquest.
Q. Is that called the Potrero de Viejo?

80 No ruling.

A. Yes, sir.
Q. Do you know where the north boundary of the Indian pueblo, the pres-nt Indian pueblo, is?
A. Yes, sir; those are the only ones I know of.
Q. Did you ever know a man out there in that country about fifteen years ago by the name of Bandelier?
A. You mean Adolph Bandelier?
Q. Yes.
A. Yes, sir.
Q. You have talked with him a great deal, haven't you?
A. Very little.
Q. He was in that country writing a history of it, wasn't he?
A. I do not know.
Q. Do you know where the Potrero el Medeo is?
A. I know Canada el Medio; I have not heard it called Potrero el Madio.
Q. Did you ever hear it called Potrero el Madio?
A. Yes; where these two cañons come together, that is the potrero.
Q. What is that called?
A. Potrero el Medio.
Q. Is that Potrero el Medio south of the Pueblo de Cochiti?
A. I do not know; that potrero lies to the south of Las Vacas, as it is called.
Q. Well, this boundary line now of this grant, as surveyed, north boundary, is a little farther north than it used to be when you were a boy, a young man?
A. Which—what do you ask me?
Q. When this grant was surveyed the northern line was fixed farther up than it used to be when you were a young man, wasn't it?

Mr. KNAEBEL: I object to the question unless it identifies the survey at least as to time.

The CHIEF JUSTICE: We understand it refers to the survey that is shown on the map.

Mr. REYNOLDS: As it appears on this map, designated on this map the Pueblo Viejo, the lines conform to the survey as returned by the survey, and the only survey that has ever been made
81 by the Government. The date of the survey—it was made in the year 1885.

Mr. KNAEBEL: I interpose the further objection that on the direct examination the subject of the survey under American authority was not opened at all; it does not appear that this witness has testified to anything on that subject in his direct examination; he has fixed a point, the Pueblo Viejo, as the word is understood, to be the north boundary. It seems to me that he is travelling not only outside of the direct examination, but is also prejudicial, because it seems to assume that we are responsible for any survey made *ex parte*.

Mr. REYNOLDS: Your honors please, they have undertaken to show by other witnesses, as well as by this witness, that the location of the northern boundary was at that pueblo, and I simply desire to show what the claim of these people was prior to the time at which this survey was alleged to have been made.

No ruling.

No answer.

Q. Do you remember the time the surveyor came out there for Mr. Whitney, a claimant?

A. I do remember, but I do not remember very well; it has been ten years.

Q. You remember the circumstance of the surveyor coming out there when Mr. Whitney was a claimant?

A. I remember that he went there to survey, but do not know how he surveyed.

Q. Now, then, that line they ran farther north than you had always understood it to be?

Mr. KNAEBEL: I object because it is incompetent and immaterial and irrelevant and uncertain in its data.

The CHIEF JUSTICE: He may answer the question.

A. I do not know, because I did not go to the place from which they ran the survey; the surveyor was at my house and asked me to go with him; he asked me to go with him to show him the places, but on the day on which he started he did not ask me to go with him any more.

82 Q. You found out afterwards where he ran the lines, didn't you?

A. I did not; I did not; I have not paid any attention to that.

Q. Did you make a statement recently that the claim was very much larger and wider after the survey than you had ever known it before, and didn't you make it in the presence of these gentlemen sitting right back of me here?

Mr. KNAEBEL: I object to the question for the reason that since

he is undertaking to discredit the witness by proving statements made outside of the court-room contrary to those made by him on the stand, he must first call his attention to the occasion on which he made a contrary statement, giving him, as far as possible, the place and the persons present.

Mr. REYNOLDS: I can do it.

Q. Do you know this gentleman sitting right back of me, Mr. L. A. Hughes?

A. I know him by sight; I do not know his name.

Q. Do you know this gentleman sitting here, Mr. Will. M. Tipton?

A. Yes; I do; I saw him, together with the other gentlemen that were with me.

Q. Where did you see them?

A. In Cochiti.

Q. When?

A. I cannot state what day; this month or last month.

Q. It was last month, wasn't it?

A. It might be.

Q. Wasn't it the 7th or 8th day of August last?

A. It might be; I cannot remember the day.

Q. Did you have a conversation upon that day with them with reference to this land grant and its boundaries?

A. They called me to find out from me whether I would know my name in the paper that they had with them, and I told them this: That I could not remember whether I had given my name or not with the party who was going with the surveyor. When they showed me my name I told them that I knew my handwriting and my name also, and then they asked me something about
83 the time that I told them that I had seen some monuments, that I had seen some monuments after the survey was made.

Q. Did you state to them on that occasion in August, at Cochiti, August 7th or 8th, when these gentlemen were there talking with you, before it, and at that time they showed you this paper that you have just been examining, did you not state the lines of the boundaries that were known to be before Mr. Whitney purchased?

A. That they were shorter, these that I saw; they were not further up, but farther below to the south.

Q. In other words, you undertook to give them to understand that the boundaries had been moved up north instead of to the south?

A. I did not — whether it was extended further away, because I did not know from what place they made the survey. What I knew was according to the information of my son-in-law, that it was extended further to the south from what it formerly was, and that is what I told them.

Q. Is this pueblo that is marked on this map, the northern pueblo, designated on the map the Pueblo Viejo—is that situated on the Potrero el Capulin?

A. Yes.

Q. Do you know where the Cuesta Colorado is?
A. I do.
Q. Do you know where the Picacho is?
A. I do.
Q. The people who have been living in the cañons down in that country had goat ranches all over that country, didn't they?
A. Yes; goat ranches and cow ranches. I had my ranch in the Canon Capulin.
Q. The Luceros had goat ranches above the Canon Capulin?
A. Yes.
Q. And west of it, too?
A. Also at the place called (Eldoch) Potrero de Chato.
Q. Now, you say there is no one living permanently in the Canon Medio Dia?
A. No; you mean the canada.
Q. Yes, sir; is there any difference between cañon and canada?
A. No; I have not seen any.
84 Q. The Indians were always very bad over that country, were they not?
A. Yes.
Q. And the people were always having trouble with them, were they not?
A. Yes; they killed a little girl in the town.
Q. Do you know where the Potrero Chato is?
A. I do.
Q. Where is it?
A. It is to the north of Canon——
Q. Is it called the same as Potrero Capolin?
A. No.
Q. Show it to me on this map.
A. This is Pichaco (pointing on the map somewhere unknown to reporter).
Q. I want to know where is the Potrero Chato; I did not ask you about the Pichaco; I asked you about Potrero Chato. Isn't it located very closely to what is designated on this map as the Pueblo Viejo?
A. It is near.
Q. Now, this upper pueblo, designated on this map as Pueblo Viejo—is that also known as the old Queres pueblo?
A. Yes; I have been informed that all the Indians who had spoken the same language as those of Cochiti were the Queres, and these were the pueblos of San Domingo, San Felipe, Santa Ana, Alguna, and Acomas; these were the Queres.
Q. Now, isn't the old pueblo marked on this map the Pueblo Viejo, known as the Queres pueblo, where all the Indians at one time were concentrated?
A. It may be so.
Q. You do not know anything about it?
A. I do not know.
Q. You do not know anything about the tradi-on of it?
A. I do not.
Q. That is all.

Further direct examination.

Mr. KNAEBEL:

Q. On the occasion when Mr. Tipton and Mr. Hughes, the two gentlemen present, made enquiries of you about the boundaries and the survey of this grant were other people present at the conversation?

A. They were the only ones; I did not see anybody else.

Q. Did they show you a paper?

A. Yes.

Q. Was that signed by anybody?

A. My name was in the paper.

85 Q. You had signed that paper personally?

A. Yes; I understand I did at the time the surveyor asked me to go along and show him the lines.

Q. Did you sign it without reading it?

A. I did.

Q. Could you tell that paper if you saw it?

A. I do not know any English, and I said that then to these gentlemen that I could not do.

Q. Would you recognize the paper if I could show it to you?

A. Looking at my name; yes.

Q. I request the Government to produce that paper if it is the deposition taken by the surveyor of the United States. (Paper produced from Government files.)

Q. State whether or not this paper is the one that you signed, shown you on that occasion. (Hands witness paper.)

A. (Witness, after examining paper closely.) A. I think it is. That is my name and my sirname.

Q. Do you understand the English language?

A. I do not.

Q. Can you read English?

A. I cannot; I do not understand it.

Q. Can you read this paper?

A. I cannot.

Q. Did you ever read it?

A. No.

Q. Did anybody ever read it to you?

A. That gentleman there. I do not know his name (pointing to Mr. Tipton).

Q. Did he read it to you in the conversation to which you have testified?

A. Yes; I asked him about the contents of that paper, to tell me what they were, that I could not read English, and he is present now. He can bear me out in that. (Paper put in evidence by plaintiffs, marked Ex. No. 7 A.)

Q. When did you first hear that the United States surveyors, in making the survey of this grant for Mr. Whitney after Mr. James Whitney had made a purchase from the people, had put the boundaries on the west, on the other side of the Hot Springs of Jemez?

A. A son-in-law of mine by name — Gallegos, whose name also

appears signed to one of those papers, he went with the surveyors and he informed me where they placed the lines.

86 Q. Did you then complain that he had made a mistake and gone too far west?

A. I understood so.

Q. Is that the only mistake you know of in that survey, the mistake of going to the wrong sierra?

A. Yes.

Q. Mr. Hurtado, did you ever tell anybody that the Jemez range, west of the Hot Springs, was the western boundary of this grant?

A. No.

Q. Were you ever a party to the extension of that survey over the Hot Springs?

A. No.

Q. Have you always consistently claimed that the survey was extended too far to the west?

A. As I have been informed by my son-in-law.

Q. And you have always said that extension was a mistake and wrong?

A. According to my understanding.

Q. Did you speak to Mr. Tipton and Mr. Hughes when they had that conversation with you that you described and show them this mistake in the claim to the west—of the survey to the west?

A. I told this to these gentlemen: I said that although I had no interest in the grant, because I had sold to you, that if I was summoned to appear as a witness I would give my statements like a Christian man, according to the best of my knowledge.

Q. Did you speak to them about this mistake—about the boundary on the west in the claim?

A. I did; all I told them was it seemed to me to be rather strange.

Q. Did you understand at that time that Mr. Tipton was an agent of the Government?

A. I did not.

Q. Did you have any understanding as to the position of Mr. Hughes in the matter?

A. I did not, and I do not know yet.

Q. You have no idea whether Mr. Hughes is a lawyer or surveyor or miner?

Mr. REYNOLDS: He is a special agent of the Government.

The CHIEF JUSTICE: He may answer.

No answer.

No answer.

87 Q. Please tell the court what a potrero is.

A. According to my understanding—according to my knowledge—it is a high mesa situated between two cañons.

Q. What is the Spanish word for colt—young horse?

A. Portro is a small horse, and a potrero is a place that is surrounded with a fence of wire or stones, and that is a portrero.

Q. Are those mesas, very abrupt cliffs, called potrero because they furnish natural corrals for colts and other beasts, other stock?

A. Yes.

Q. Are those potreros sometimes used by the Mexicans in rounding up cattle so as to get the cows together in one place?

A. They are.

Q. Is there a place here which has been used all your life for the rounding up of cows?

A. All the potreros are adapted for that purpose.

Q. Is there any particular portrero called Portrero de las Bacas?

A. Yes; here it is. (Witness points — a place northeast of the Pueblo Viejo, between the Alamo and Capolin canons.)

Q. Is potareto a diminutive of potraro; is potrero a small potrero?

A. Yes.

Q. Is this potrero called Potrero de las Bacas because the old people were accustomed to round up their cows there, or keep cows there?

A. Yes; I have been informed two persons by name of Romero had ranches at that Potrero de las Vacas.

Q. Were you informed that by your ancestors?

Mr. REYNOLDS: I object to going to matters of that kind.

The CHIEF JUSTICE: It seems to us there is no occasion for it; it is simply encumbering the record.

Mr. KNAEBEL: I am doing this in order to save time. A very old document recently resurrected from the archives is going to be used here and the question arises in reference to this document.

88 Mr. REYNOLDS: I did not see at first the gentleman's intent in introducing this testimony. I did not see what he was after. He introduced this doc-ment himself, and now he undertakes to explain it away. This testimony is for the purpose of doing away with any declaration made in that document by the testimony of this witness, and which he has had, as to the occupation of it at that day.

The CHIEF JUSTICE: Well, if it is of any importance, go on.

No answer given to last question.

Q. Is it not a characteristic feature of the lands within the Canada de Cochiti grant that the mesas are divided by very deep and precipitous cañons?

A. Yes.

Q. And those divisions of the table-land result in the formation of numerous potreros or natural corrals?

Mr. REYNOLDS: I object to the question because it is leading.

No ruling.

No answer.

Q. How many potreros or natural corrals are there on the Canada de Cochiti, and what are their names, commencing with the most

easterly? Designate it by the two cañons that bound it, and proceed thence to the west and give the names and point out each one on this map and give its name.

A. I will begin above: The Potrero Capolin; my eyesight is not very good.

(Mr. KNAEBEL to translator: Point them out.)

Mr. REYNOLDS: He asked the witness to designate these cañons and now he asks the translator to point them out on the map and I object.

Mr. KNAEBEL: I asked him to explain them; the witness says his eyesight is bad, unable to read; he says he cannot read English.

Mr. REYNOLDS: I do not care; he asked this witness to *to* give the names and topography of the cañons and the potreros in their order, and now he has asked the interpreter to point them
89 out on this map or read the map of those potreros in the order in which they come.

No ruling.

Q. Which is the first potrero on the easterly part of the Canada de Cochiti grant—I mean the potreros nearest the Rio Grande?

A. They are almost all about the same distance from it.

Q. What is the name of the first one?

A. The Potrero Capulin.

Q. What cañon is on the east of the Potrero Capulin?

A. I do not know what cañon; the Rio del Norte lies to the east.

Q. Does the Rio del Norte join the Capulin, touch it?

A. There is a little bend in the river where it joins to the Rio del Norte.

Q. What two cañons make the Potrero Capolin?

A. It is an arroyo that comes down from a steep on which the pueblo is situated, and that arroyo comes to this cañon I have just mentioned.

Q. Does the Canon del Alamo lie on the side of it?

A. It is on the other side, and this Canon Capolin empties into the river, the Rio Grande river.

Q. How near to that potrero is the Cuesta Colorado?

A. The Cuesta Colorado is a place where the road goes up to the steep, and the pueblo is right on the steep itself, and that is what we call the Cuesto Colorado.

Q. Give the name of another potrero.

A. There is no other potrero there, and at the edge of the end of the Canada del Alamo is a place that is called Potrero Largo.

Q. And what cañons make that potrero?

A. That is formed by the Canons Del Alamo and Capulin.

Q. What is that called—Potrero Largo?

A. Yes; to the edge to the——

Q. That potrero is formed by the Canons Capulin and Alamo?

A. Yes.

Q. Well, now, give the name of another potrero.

90 A. On this side of the Capulin is a potrero, La Cuesta, as we call it.

Q. What cañons bound that?

A. There are some cañons—sitos—that run from the Picheco there.

Q. Do you know any other potrero except Potrero Los Casas?

A. None except the potrero at the point of the mesas near the canada.

Q. How many years were the descendants of Antonio Lucero engaged in defending the grant against the incursions of the Navajoes?

A. I cannot state; they were there many years; when I opened my eyes they were already fighting with the people; it was a continuous war.

Q. Did any of these people lose their lives in defending their property?

A. Yes; that I know there are three; these that I know are three uncles of mine father.

Q. Killed?

A. They were killed by the Navajoes.

Q. Any others?

A. Cristoval Lucero, Rafael Lucero, Roman Lucero, Loretta Lucero, Jose Apodoca, and a little girl, the daughter of M-nuel Gonzales, was killed right at the house itself.

Q. That is all.

Mr. REYNOLDS: That is all.

Further cross-examination by JAMES H. PURDY, Esq.:

Q. In your testimony yesterday you described certain places where your relatives, the Luceros, had been accustomed to graze their numerous stock. Now, in reference to the grazing of the animals, who were the people who grazed those lands—name them—that grazed their stock on the lands of the Cochiti grant?

A. Those that I saw myself with my own eyes are the sons of Loretta Lucero; some of them were there during the summer time with their families on the Rancho Viejo, others were on the Rancho de Utos, and others went with their goats to the Ojeto del Chato, and the rest of the people that lived there also went to the mountains with their cows and their goats.

Q. That is all.

Mr. REYNOLDS: That is all.

91 ROMAN A. BACA, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified as follows:

Direct examination by Mr. KNAEBEL:

Q. State your name, age, residence, and occupation.

A. My name is Roman A. Baca; my age is sixty-four years; I live at Pena Blanco, and my occupation is farmer and stock-raiser

Q. Do you belong to the Lucero family?
A. I do, through my wife.
Q. What relation is your wife to the late Antonio Lucero, the grantee of the Canada de Cochiti grant?
A. She perhaps is a great-granddaughter.
Q. Where was she born?
A. At the Canada de Cochiti.
Q. How long did she live in the Canada de Cochiti?
A. She lived there until she was married to me.
Q. When was she married to you?
A. In the year 1851.
Q. Did you ever live in the Canada de Cochiti?
A. Yes.
Q. During what period of time?
A. During the winter time I lived there four or five years.
Q. What year*d?*
A. From the year fifty-four to the year sixty I spent my winters there.
Q. When did you first see the Canada de Cochiti?
A. In the year fifty-two; in the year fifty-two and fifty-one.
Q. Do you know what at that time was common repute as to the boundaries of the Canada de Cochiti grant among the old people who are now dead?
A. Do; I do know something.
Q. What was generally said in that community on that subject?

Mr. REYNOLDS: We enter an objection that the boundaries of this grant are not indefinite and uncertain so far as to call for proof as to what the boundaries are. Any objects called for may be located, but the boundaries themselves are fixed by the grant title papers.
No ruling.

A. That the boundaries of that grant of Cochiti, of the
92 Canada de Cochiti, were to the north the Pueblo Viejo Cochiti; on the east, the Rio del Norte; the west, the top of the mountains where the watersheds divide the Jemez, and to the south, the lands of the Indians of Cochiti.
Q. Have you ever seen the north boundary call of the grant, the Pueblo Viejo?
A. I have.
Q. When did you see it first?
A. I saw it the first time in fifty-three, when my father-in-law, Domingo Labadie, took me there to show me that place. I was at Cuesta Pindata with some goatherds.
Q. Is the Cuesta Pindata a cave in colored rock?
A. No; it has been scratched—it has been painted.
Q. Artificial?
A. Yes.
Q. State more fully the circumstances under which your father-in-law pointed out to you the Pueblo Viejo, the north call of the grant.
A. When he took me to show me the boundary line he took me

first to the Rio Grande, where the Cuesta comes to the Canada del Alamo, and there he showed me a cross that was situated on the slope on the side of the river. It was a cross made of rock, and that was the first boundary line.

Q. Did he point that out to you as one of the monuments?

A. Yes.

Q. One of the monuments established in the old Spanish days?

A. So he told me, and then he took me up to the old Pueblo Viejo—to the top of it. We went on the north side—that is, travelling towards the south.

Mr. Reynolds: I object to the form of the question, as it is leading, and ask that both question and answer be stricken out.

The Chief Justice: It is leading. Objection sustained.

Q. Where is that Pueblo Viejo?

A. It is on the top of the potrero—La Vacas, it is called.

Q. What cañons are near it?

A. There are the Canons Del Capulin and Del Alamo.

93 Q. On that occasion did you and your father-in-law go into that old pueblo or not?

A. We did.

Q. State what you saw in there on that occasion.

A. We only saw the crumbling ruins of the pueblo and we went around there and we saw a tank.

Q. Describe that tank.

A. We saw the tank; it is on the side of the pueblo. The pueblo is very large, and in the center of the tank is a large juniper tree.

Q. How large is that juniper tree?

A. That juniper tree, at that time it was very large.

Q. Was it as much as two or three feet through?

A. I do not remember, but it was very large one. It might have been two feet, or more or less.

Q. State whether or not you ever heard the Pueblo Viejo referred to as the boundary of that grant by other old people living upon that tract; and, if so, at what time, during what period of time?

A. Since I went to that place I always heard it stated by the old people that that was the boundary line of the north.

Q. Did you ever hear in those old days of any other boundary line on the north?

A. Yes; my father-in-law himself showed me another boundary line on the west, toward the west, on the same northern side, on the same side of the north.

Q. You say the first boundary line he showed you was the cross in the pile of stones?

A. It is on the slope of the side of the river; it is a cross made of rocks.

Q. How large a cross is it?

A. It is a large one; it was very large.

Q. How high?

A. It was simply rocks embedded into the earth.

Q. Was the second monument at the tree and in the tank?
A. Yes.
Q. You say he also showed you a third monument on the north.
A. Yes, sir.
94 Q. Describe that third monument on the north of the grant.
A. It was a third monument west, toward the west. It was the trunk of a juniper tree at the foot of a peak cerro.
Q. What peak?
—. Those peaks on the steeps of San Isidro. There are three of them.
Q. How near is the third monument to the foot of the mountain known as the Picacho?
A. It is very far.
Q. To the west?
A. It is somewhat to the north.
Q. What do you say is to the north?
A. No; the monument.
Q. That is all.

Cross-examination by Mr. REYNOLDS:

Q. The place where this Pueblo Viejo, which you call the north boundary, is situated — on the Potrero de las Vaca, is it not?
A. Yes.
Q. That potrero is not very high, is it?
A. It is.
Q. How high?
A. I do not know, but it is quite high.
Q. Do you know where the Potrero Capolin is?
A. I do.
Q. Does it lie between the Canon del Alamo and the Canon Capulin?
A. It is.
Q. Is that the potrero which lies between the Canon Capolin and the Cuesta Colorado called the Potrero Largo?
A. No; I do not know. I have always heard it called that way. I do not know that they called it the Potrero Largo. They called — Potrero Capolin.
Q. Now, you have described two pot-eros as the Potrero Capolin; which is right?
A. I have only given one, and that is the one called Potrero Capulin.
Q. Is that situated between the Canon del Alamo and the Canon Capulin?
A. It does.
Q. Now, do you know where the Canon Colorado is?
A. I do.
Q. You have been over that country, haven't you?
A. I have.
Q. Do you know where the Pueblo Cuesta Colorado is?
A. I do.

95 Q. What potrero is that situated north?
A. That is the Potrero El Chato.
Q. Is that also the Potrero Capulin?
A. No.
Q. Now, what is the potrero that lies between Canada el Medio and the Canada Jose Sanchez?
A. That is Potrero Cuesta Blanca, as it is called.
Q. Now, do you know the potrero upon which the ruins of the old pueblo is situated at the cañon and just south of the cañada?
A. Which pueblo do you mean?
Q. I mean the one to which the Indians retreated at the time the Spaniards conquered them?
A. The last time?
Q. I mean the last time, from 1660 to 1695.
A. That is called Las Casas, where they retreated the last time.
Q. Is that called the Potrero Viejo?
A. No.
Q. Is it not called the potrero of Pueblo de Viejo Cochiti?
A. I have not known or heard any other pueblo called Pueblo Viejo except that one.
Q. Whish one?
A. That one to the north.
Q. Did you never *here* the pueblo situated on the mesa, at the point of the mesa near the Canada Cochiti, about where the present Cochiti pueblo is, in the valley, called the Pueblo Viejo?
A. No.
Q. Now, you never heard the potrero on which the pueblo is situated, that lies just south of the Canada de Cochiti and just west of the Cochiti pueblo as it now exists, called the Potrero Viejo?
A. No.
Q. You are familiar with the history of that country, are you?
A. I know it very little, but I know it.
Q. Did you ever know a man named Bandalier, who was out in that country in the year 1880?
A. No.
Q. Where do you live?
A. At Peña Blanco.
Q. How long have you lived at Peña Blanco?
A. I have lived there since the year fifty-one to this date.
96 Q. Where were you born?
A. Here in Santa Fé.
Q. You never lived at Canada de Cochiti?
A. I did.
Q. How long?
A. I lived there four or five years during the winter time.
Q. Was it ever your permanent home?
A. No; only during the winter. I went to take care of my property.
Q. That is all.

Further direct examination by Mr. KNAEBEL:

Q. Were you in the court-room when I produced the old grant papers of this grant from the custody of the surveyor general yesterday, when I read them and showed them?

A. I think I was.

Q. Do you know who brought these old grant papers to the surveyor general's office?

A. When?

Q. Any time.

A. Do you mean the papers of the grant?

Q. Yes.

A. I myself; I myself and Felipe Sandoval and Samuel Ellison and Manuel Lucero, deceased.

Q. About what time?

A. I do not remember the time.

Q. Was it in the years sixty to seventy?

A. It was about that time; I do not remember.

Q. Did you leave them in the custody of the surveyor general?

A. Yes.

Q. From whose custody did you and Felipe Sandoval and the others you hafe named received these papers for delivery to the surveyor general?

A. From the hands of the Lucero family. We came here as a commission.

Q. Who appointed the commission to take these old papers to the surveyor general's office?

A. The people of La Canada appointed us.

Q. That is all.

Mr. REYNOLDS: That is all.

97 FELIPE SANDOVAL, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified as follows:

Direct examination by Mr. KNAEBEL:

Q. Did you hear the testimony of the last witness, Roman A. Baca, that he delivered to the surveyor general, in behalf of the people of Canada de Cochiti, the old grant papers; did you hear what Roman Baca said?

A. I did not understand it well; I am somewhat hard of hearing.

Q. Do you know where the old title papers of the Canada de Cochiti are?

A. I know that myself, Roman Baca, and Manuel Lucero brought them to the office of the surveyor general, and I think they are at the present time in the hands of Mr. Whitney.

Mr. KNAEBEL: I ask that that answer be stricken out as not responsive to the question.

No ruling.

Q. At whose request did you and Roman Baca bring these old papers to the office of the surveyor general?

A. We came for the Lucero family.

Q. Did you receive the papers from these people on the grant?

A. Yes.

Q. And did you leave them in the surveyor general's office?

A. We did.

Q. Are you related to the late Antonio Lucero, the grantee of the Canada de Cochiti grant?

A. I am the son-in-law of a grandson of the grantee.

Q. What is the name of your father-in-law?

A. Antonio Serafin Lucero.

Q. Did you ever live on the Canada de Cochiti grant?

A. I have not, personally; he did.

Q. Did your wife's family live there?

A. Yes; she lived there. She was born there.

Q. How often have you been within the limits of the Canada de Cochiti grant?

A. I have been there many times; I could not state
98 how often.

Q. How far back have you known that grant?

A. Since the year forty-nine.

Q. Did you ever hear the old people of that day talk about the Cochiti grant and its boundaries?

A. I did.

Q. Did you know the common repute in those days on those subjects?

A. About those persons? I know they were all honest people and of good character.

Q. Did they speak about the boundaries of the grant?

A. They did.

Q. State what they said or what the common repute in that community was as to the boundaries of the grant.

Mr. REYNOLDS: We enter an objection that the boundaries of this grant are not indefinite and uncertain, so far as to call for proof as to what the boundaries are. Any objects called for may be located, but the boundaries themselves are fixed by the grant title papers.

No ruling.

A. That they always said that the boundaries of the grant were: on the north the Pueblo Viejo of Cochiti, to the south the lands of the Cochiti Indians, on the east the Rio del Norte, on the west the top of the mountains.

Q. Do you know whether or not the descendants of Antonio Lucero and his representatives used the land within the boundaries you have described; and, if so, how did they use them?

A. They did.

Q. How did they use them—for what purpose?

A. Some of them by farming the land, and some of them by pasturing on it.

Q. State where the Pueblo Viejo on the north boundary is situated.

A. It is to the north, between the Canon del Alamo, at a place called Potrero de las Vacas.

Q. State whether or not until within the last two years past you ever heard any question or dispute as to the question of the north boundary of that grant.

99 Mr. REYNOLDS: I object, as it is leading.

The CHIEF JUSTICE: It is leading.

No answer.

Q. Between the years 1849 and 1890, did you ever hear any question raised as to the location of the north boundary called for in the grant?

Mr. REYNOLDS: I object to the question, for the reason that it is leading, incompetent, and immaterial. The question is, Where is the north boundary, not what somebody said it was or claimed it to be at a certain place; or for what amount, whether for one, ten, a hundred, and any other number of leagues. The question is leading and, besides, it is negative information.

The CHIEF JUSTICE: We think this is immaterial.

Whereupon the plaintiffs then and there excepted to the ruling of the court.

Q. Do you know the mesa to which the Indians retreated in the rebellion referred to in the grant?

A. You mean the last time they rebelled?

Q. Yes.

A. I do.

Q. Where is that mesa?

A. It is at a place called today Potrero de los Casas.

Q. How do you know that is the place?

A. Because the old people stated that that was the last time that they took them down from there, drove them from that place.

Q. How long have you known that by tradition and reputation?

A. Since the time I got married. Almost all the time the old people would talk about that subject.

Q. In what year did you get married?

A. In the year forty-nine, and I knew all that region.

Q. How far up the Canon de Cochiti did the grantees cultivate, the old people, from your knowledge?

A. In those times when they cultivated there I did not see
100 them, but they stated that they cultivated a place in the cañon called Frijoles—bean patch.

Q. Do you know where that place is?

A. I do.

Q. Where? You mean Canon de los Casas?

A. No; Frijoles; it is at the bottom of the cañon.

At this point an adjournment was declared until two o'clock p. m.

Pursuant to adjournment, at the hour of two o'clock p. m., September 22nd, 1894, the following proceedings were had in the above-entitled cause:

Mr. Knaebel resumed the further examination of the witness FELIPE SANDOVAL as follows:

Q. What official positions have you held in your county?

A. In the years sixty-one and two the first time I was captain of the militia in the battle of Valvedere; in the years sixty-six and seven I was justice of the peace; in sixty-eight and nine I was senator.

Q. In the territorial legislature?

A. Yes. In eighty-two and eight I was justice of the peace again.

Q. Were you justice of the peace in February, eighty-one?

A. Yes.

Q. Whose signature is affixed to the Spanish certificate now shown you?

A. Felipe Sandival.

Q. Who is that?

A. Myself.

Q. Have you certified to this copy of the will of Antonio Lucero's widow? How did you know that that copy was a true copy of the will?

A. I have not my glasses here.

Q. Look at the paper now shown you and say if you recognize it; also look at the certificate signed by you at the foot.

A. The certificate was signed by me; it was presented to me as justice of the peace and I authorized it.

Q. Do you remember seeing the will, the original will, Felicia Aramia, widow of Antonio Lucero?

A. I do remember of Francisca Jaramillo.

101 Q. Did you ever have it in your possession?

—. I remember once reading it.

Q. Was a copy ever made of it?

A. That copy is made.

Q. Is this a true copy?

A. So I believe.

Q. Do you know where the original will is?

A. At present I do not know where it is, but I believe Pablo Lucero ought to have it.

Q. Was he the last one you knew had it?

A. I think so.

Q. Is Pablo Lucero one of the descendants of Antonio Lucero?

A. Yes.

Q. How old is Pablo Lucero?

A. I cannot state how old he is, but he may be over sixty years.

Q. Where does he live?

A. He lives at the Canada Cochiti.

Q. In what part of the Canada de Cochiti is he residing?

A. He lives on the lands; he lives at the town itself, and the

lands that he cultivates are at the canada itself, and his cow ranch, he has it at Rancho de las Utos.

Q. Where is the Ranch del Utes?

A. It is to the north of Canada Cochiti.

Q. Is it near the junction of the Canada el Medio?

A. Yes.

Q. You mean the Canon Medio Dia or el Canada Medio?

A. I refer to the Canada el Medio, to the east of the Canon del Norte.

Q. How far to the north from the plaza is it?

A. More or less, about five or six miles.

Q. How long has he occupied that ranch?

A. Since they have always been occupying it, I do not know.

Q. How many years?

A. His father had stock and he has stock himself.

Q. In the same place?

A. At that place and at other various places.

Q. Do you know under what claim of title they occupy
102 this place?

Mr. REYNOLDS: I object; it does not matter how they occupied it.

The CHIEF JUSTICE: He may answer it.

A. We claim it was a grant of theirs.

Q. Do you mean the Antonio Lucero grant—what grant?

Mr. REYNOLDS: I object to the form of the question.

No ruling.

A. Antonio Lucero grant.

Q. That is all.

Cross-examination by Mr. REYNOLDS:

Q. Do you know where the house of Antonio Lucero, the original grantee, is situated?

A. I do not know where his house is; they are all in ruins, falling down.

Q. You are certain of that, that they are in ruins and falling down?

A. Many of them; the town that is above is in good condition, but the town that is below is all tumble- down.

Q. What do you mean by the town below?

A. There were people living all along that canada.

Q. You said the town above was in good preservation and the town below in ruins. Now, what town below is in ruins—what direction is it from the present plaza of the canada?

A. That is on the plaza—there are houses all along that canada, on both sides of the canada, and a little below the town is the plaza of La Hurtado.

Q. You never have seen the house of Antonio Lucero, the original grantee, have you?

A. No; I have not.

Q. How do you know it is in ruins?

A. Because since he used to live there I think that his house is falling down; I did not know him either.

Q. Where were you born?

A. At Santa Fé.

Q. When was the first time you ever saw the Canada de Cochiti?

A. In the year forty-nine, when I was married, was the first time when I ever saw the Canada de Cochiti.

103 Q. Where have you lived all your life?

A. Since forty-nine to this date I lived at Peña Blanco, and eight years I lived in Colorado, and in the year seventy-seven I came back to Peña Blanca.

Q. You have never lived in the Canada de Cochiti?

A. I have not gone there to live, but I came there to farm the lands of my father-in-law and to help him.

Q. Do you know where the mesa of Cochiti is?

A. There are many.

Q. Many Cochiti mesas?

Mr. KNAEBEL: I object to it because he is assuming that there is a Cochiti mesa.

No ruling.

A. There are many that we call potreros.

Q. I am now asking you about the Cochiti mesa.

Mr. KNAEBEL: I obje-t, as it is indefinite.

The CHIEF JUSTICE: You may ask it.

A. I do not know any place that is called the Cochiti mesa; there are places called potreros.

Q. Is a potrero a small mesa?

A. But they do not call it Mesa Cochiti; they call Potreros Las Casas and el Medio and Pino.

Q. I am not asking you that; I am asking if a potrero is a small mesa, all of them.

A. What we call mesa is this, for example: When in going to cienega—that is, a small mesa—and the rest of them are called potreros.

Q. You call this potrero of Capolin that lies between the Canon Capulin and the Canada del Alamo?

A. That is called a potrero.

Q. Is it a mesa, too?

A. At the present time it might be called a mesa, but heretofore we Mexicans have always understood it to be a potrero.

Q. Do you know what a potrero is?

A. I understand it and what all the Mexicans understand

104 it. For instance, a place lying between two cañons, and that portion that lies between the cañons is a potrero.

Q. Is a mesa also?

A. It might be.

Q. It answers as a general description of a mesa, don't it?

A. It might answer to it, but I have always understood them so.

Q. You do not know where the mesa of Cochiti is?

A. No.

Q. This place that you describe, the place at Pino canon, is that a mesa or potrero?

A. They have always called it Potrero de la Cuesta Colorado.

Q. Have you never heard it called a mesa?

A. I never have, either this mesa or any other.

Q. Then you have never heard this potrero, upon which — the Pueblo Viejo marked on this map, called the Cochiti mesa, have you?

A. They have always stated that it is at the top of the potreo, itself, but they have never called it a mesa.

Q. They have never called that the Cochita mesa, have they?

A. I have not heard it so called.

Q. It is a long ways from the present pueblo of Cochiti, isn't it?

Mr. KNAEBEL: I object to the question as being indefinite.

No ruling.

A. I do not know the distance. I cannot state.

Q. Have you ever travelled it?

A. I have, but I cannot know how many miles it is.

Q. Did you testify before the surveyor general in 1882 with reference to this claim?

A. I did.

Q. Did you know as much about it then as you do now?

A. I gave my testimony then the same as I did now, as far as I can remember.

Q. Your name is Felipe Sandoval?

A. Yes, sir.

Q. You are the same Felipe Sandoval that testified before the surveyor general on July 21st, 1882?

A. Yes.

Q. Was this question asked you, and did you not make
105 the following answer: "Q. Are you acquainted with the grant known as the Canada de Cochiti? About how long have you known it, and where is it situated? A. Yes; I am. I have known it since 1866 or '67; am not positive of the date. It is situated in the Canada de Cochiti, Bernalillo county, Territory of New Mexico."

A. Yes.

Q. And on cross-examination you testified that you knew the boundaries of this grant?

A. I do not remember.

Q. Is all the knowledge you have as to it derived from the title papers you and Mr. Baca and Mr. Ellison presented to the surveyor general?

A. I have the knowledge from those title papers and I have the knowledge from what was said among the old people.

Q. Was your first knowledge derived from the title papers?

A. The first statements were made by the old people. I saw the papers afterwards.

Q. How long afterwards?

A. I do not well remember whether it was in the year '67 or '66

and whether or not it was in '68 that we brought them to the surveyor general.

Q. Did you not testify before the surveyor general in answer to the following question and did you not make the following answer: "Q. When did you first see this certified copy? A. I saw the certified copy at the same time I saw the other grant papers, in 1849"?

A. Possibly it might be so. I may be mistaken.

Q. When were you married?

A. In the year forty-nine, on the 6th day of August.

Q. And that is when you first acquired your knowledge of the Cochiti grant, isn't it?

A. Yes; because I would travel with my father-in-law and he would show me the places and talk to me about it.

Q. I want to know if the first time you knew of the grant was just before you were married when you were going over to see your wife and before you had any father-in-law.

A. From the time that I was in the house he would al-
106 ready talk to me about the papers and I would see them.

Q. That was in forty-nine?

A. Yes; forty-nine.

Q. That is the year you got your first information as to the boundaries of this grant?

A. Yes.

Q. Are you interested in this grant?

A. I sold my wife's interest.

Q. To whom?

A. To Mr. Whitney.

Q. That is all.

Mr. KNAEBEL:

Q. You gave your testimony before the surveyor general. It was in the form of a written deposition, was it not?

A. I think so.

Mr. KNAEBEL: I ask leave to read the deposition of Felipe Sandoval taken before the surveyor general.

Mr. REYNOLDS: I have no objection to this whole deposition being read—no objection on the part of the Government.

(Here insert deposition.)

JOSE SANDOVAL, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified as follows:

Direct examination by Mr. KNAEBEL:

Q. What is your name, age, residence, and occupation?

A. My name is Jose Sandoval. I am going on 62 years. I live at Canada de Cochiti. It is 37 years that I have been living there. I was a servant of the government of militia.

Q. Are you related to Antonio Lucero, the original grante- of the Canada de Cochiti grant?

A. My wife is.

Q. What relation is your wife to the late Antonio Lucero, grantee of the Canada de Cochiti grant?

A. She is a grand-daughter.

Q. Where were you born?

A. Here in Santa Fé.

Q. When were you married?

A. In the year '51—I was married in '47. I correct myself.

Q. Did you begin to live in the Canada de Cochiti before or after you were married?

A. After my marriage.

107 Q. When—how many years after?

A. It is 36 years that I have been living there since I was married.

Q. You lived there 36 years since your marriage?

A. Yes.

Q. During the time of your residence in the Canada de Cochiti, have you heard old people that have since died, during their lifetime residents in that community, claiming to occupy lands under that grant, speak of its boundaries?

A. Yes.

Q. What did those old people say as to the boundaries?

A. That the boundary line on the east was the Rio del Norte; on the north, the Pueblo Viejo of Cochiti, which is on the summit of the Cuesta Colorado.

Q. The south?

A. On the south the high mountains of Zia, where it comes down and abuts against the Jemez mountains, because at that time the old people called the Sierra del Zia.

Q. How near did the grant go to the Indian league of the Cochiti to the south?

Mr. REYNOLDS: I object to that——

Mr. KNAEBEL: Question withdrawn.

Q. What was the boundary on the west, as stated to you by those old people?

A. I was not told what the boundary was on the west.

Q. Did you ever see the Pueblo Viejo de Cochiti, the boundary on the north?

A. No.

Q. You speak only from common reputation?

A. Yes; I know the pueblo well; I know, but I do not know; there are some rocks there, but I do not know where any monuments are.

Q. Have you ever been at the place indicated on this map, the Pueblo Viejo, near the Cuesta Colorado?

A. Yes.

Q. When did you first go there?

A. It was many years ago.

Q. How many years after you were married did you go there?

A. It was after I was married.

Q. Who first showed that old pueblo to you as the boundary?

A. An old man, Manuel Arragon.

108 Q. Is he living or dead?

A. He is dead.

Q. Was he one of the Lucero family?

A. Yes.

Q. What did the old man, Manuel Arragon, tell you about the boundaries?

Mr. REYNOLDS: I object to this hearsay testimony; the boundaries of this grant are declared on in the petition; they are not indefinite and uncertain, and it does not fall within the rule to prove what is uncertainty and indefiniteness by general reputation.

The CHIEF JUSTICE: We will take it under the objection.

A. That the boundary line of the grant reached up to the pueblo to the north and at that place.

Q. Was he there at the Pueblo Viejo when he told you that?

A. Yes.

Mr. REYNOLDS: I object further that the statement of any particular individual as to the boundaries is not proof of general reputation such as would fall within the exception to the rule.

The CHIEF JUSTICE: He may answer.

A. Yes.

Q. What use has been made of this ranch by the claimants under it since you have known it?

A. They have not used it; they have made no use of it; the heirs have sold the portions that they had there.

Q. Before they sold it to Mr. Whitney how did they use and occupy the grant?

A. By farming.

Q. Did they have any herds or flocks?

A. No; they only had goats and cows.

Q. Where did they pasture their goats and cows?

A. On the mountains to the Cuesta Colorado, near to the mountains there on these potreros.

Q. Where did they occuoy ranches; at what places did they occupy ranches in the cañons?

Mr. REYNOLDS: I want to know whether this has reference to time prior or subsequent to February 2nd, 1848.

109 Mr. KNAEBEL: There is no limit. We can state back a year, or any time, up to the present.

The CHIEF JUSTICE: We will take the question.

Mr. REYNOLDS: I object to the question for the reason it is indefinite and uncertain.

A. Yes.

Q. State the places.

A. They had two ranches in the Canada de las Casas. One of them was below the place where two cañons come together on the Del Norte and on the Canon el Medio, and further up in the cañon

they had another place where they spent the summers with their cows.

Q. That is all.

Cross-examination by Mr. REYNOLDS:

A. They pastures their stock all over these mountains in the Cañada de Cochiti, didn't they?

A. Yes.

Q. They pastured their stock over the mesas from north to south in the Canada de Cochiti, didn't they?

A. On the west and also in the direction of southwest.

Q. In every direction?

A. Yes.

Q. There were a great many other people living on the Canada de Cochiti besides the Luceros, weren't there?

A. When I went there there were very few people living at that place; they had already come out on account of the hostility of the Indians.

Q. There were a great many people living there that did not belong to the Lucero family, wer'n't they?

A. All those that I knew at that time that I saw there belonged to that family.

Q. Anybody else?

A. No.

Q. How many of them were there at that time?

A. At that time there were about twenty or twenty-two heads of families.

Q. None of them lived at any other place the first time you know them except those living at the canada?

A. Yes, sir.

110 Q. Do you know where the old house of Antonio Lucero is situated?

A. I do.

Q. Where is it?

A. The house where Don Pablo Lucero lives.

Q. It is in ruins?

A. No, sir.

Q. Well, is it at the canada?

A. It is at the canada.

Q. Do you know where the Cochiti mesa is?

A. It may be the Pueblo Viejo of the Cuesta Colorado.

Q. Where is it?

A. We do not call them mesas in that vicinity; we call them "potreros."

Q. Then you do not call that place Cochiti mesa, do you?

A. Only there at the Mesa Prieta, and they do not call it the Mesa Cochiti.

Q. You do not know of any place they call the Mesa Cochiti?

A. I do not.

Q. You have never heard of it?

A. Never.
Q. That is all.

Mr. KNAEBEL:

Q. In answering one question of counsel who has just examined you, you stated that all the people pastured to the west of the mountains; on all the potreros to the north also. Do you know who were the families the people that you referred to belonged?
A. Yes.
Q. These are the only people that pastured there, are they not?
A. These were the only ones.
Q. And they claimed the right to pasture them——

Question withdrawn.

Q. Under what claim did they pasture there?
A. That they were there with the Cochitit Indians, and the Cochiti Indians were pasturing over all the lands of the grant, and they were pasturing over to their lands.
Q. Was that by mutual consent or not?
A. Yes.

That is all.

Mr. REYNOLDS, on further cross-examination:

Q. Were you present when any consent was given?
A. Yes.
Q. When?
A. There at Cochiti.
111 Q. Didn't the Indians' stock run over your lands indiscriminately all the time?
A. No, sir.
Q. How long have you lived at the canada?
A. I have been living there thirty-seven years.
Q. You went there when?
A. In the year forty-two or forty-seven.
Q. Can you give it a little closer than five years?
A. No, sir.
Q. You have a pretty good knowledge of time?
A. No, sir.
Q. Nor good knowledge of distance?
A. No; I have no other knowledge than by the statements made by the old men at that time.
Q. All you know is what you heard?
A. Yes.
Q. And you say that you were present when the consent was given for the roaming of the stock over your place by the Indians and your stock over theirs since you were married?
A. Yes.
Q. You do not know what arrangements were made in 1817 or who lived on the grant in 1817, do you?
A. I do not.

Q. You do not know how many people lived there on that claim and claimed a part of the grant in 1817, do you?

A. I do not.

Q. There have been a great many people that had no relation to the Lucero family who lived there in 1817?

Mr KNAEBEL: Objected to as being opinionated.

The CHIEF JUSTICE: You can determine that as well as the United States.

A. There may have been, but I do not know much about those times. I do not know about those times.

—. You did not hear any tradition about that, did you?

A. No.

Q. That is all.

Mr. KNAEBEL: That is all.

112 ZENON SANDOVAL, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified as follows:

Direct examination by Mr. KNAEBEL:

Q. What is your name, age, residence, and occupation?

—. My name is Zenon Sandoval; my age, forty-two years, and my profession are in different ways. I prefer the farming profession to make my living.

Q. Where have you resided—at what places have you resided—during your life?

A. Well, when I was a boy, as I could remember, I was residing at Canada de Cochiti, at my grandfather's house or home, and at Rafael Serafin Lucero.

Q. Where were you born?

A. At Pena Blanco.

Q. How old were you when you first went to the Canada de Cochiti?

A. I could not remember. I remember that I was at Canada. That is the first thing I could remember.

Q. How many years did you live at Canada de Cochiti?

A. Until my grandfather died, in 1860.

Q. Then where did you go—to what place?

A. To Pena Blanca, with my father and mother.

Q. Afterward where did you go to live?

A. To Pena Blanca.

Q. After that where did you go—did you ever go to Colorado?

A. Yes, sir; I was there. I went to Colorado in 1870.

Q. In what county?

A. Conejos county.

Q. Did you hold any official position there?

A. Yes, sir. I was appointed there for one term as sheriff, and then I was re-elected for another term.

Q. As sheriff?

A. Yes, sir; of county of Conejos, and also I had the position of

I could answer the question, anyhow, for the reason that I could not understand; it is a very long question.

Q. (Question withdrawn.)

Q. Did you learn from the speech of the old people that used to live on the grant anything about the Indian insurrection against the Spaniards?

A. Yes, sir; I heard the old people have many talks in reference to the insurrection.

Q. Did they say what the Indians did after the Spaniards had defeated them?

A. Yes, sir; they said that they had lots of trouble, and right there at home, at Canon, at their own house; they said they were not sure; they said their interest was not sure; they was stealing and was in trouble all the time, and until now I hear the claim that the property was taken away from my grandfather.

Q. You are talking about the Navajo Indians now?

A. Yes, sir.

Q. Did the old people tell you about the time when the Cochiti Indians fought with the Spaniards?

A. Well, I heard some talks about these Indians among the old people.

Q. But you have not any certain memory on the subject, have you?

A. Well, all that I could remember is that those Indians was conquered the last time at the Potrero de las Casas; that was
116 the last pueblo they made.

Q. What did they say about that?

A. They said that those Indians had a pueblo there and were driven from there, and they made another pueblo at Potrero Canon de Casas, and from there was come the last time to the present pueblo, who are there now.

Q. Did they tell you how this pueblo at Las Casas was taken by the Spaniards? Did they tell you anything of the circumstances of the capture?

A. Yes, sir; I remember what they said.

Q. What did they say?

A. They said that the soldiers went there at the cañon in some place and sent the horses over to the present pueblo of Cochiti to an open place. In time they were ordered to drive the horses passed it. At night-time the soldoers went near the Canon de Pino, where Allerton is now, and they went on these trails west to the pueblo and made a fire and drove the Indians out.

Q. Did you see any of the breastworks of the Indians there today—some of them left?

A. I believe now at the present day a man could see some of those there.

Q. Were you present when the United States surveyors, in or about 1882, made the survey of the Canon de Cochiti grant?

A. Yes, sir; I was present.

Q. Were you with them on the north boundary?

A. I was with him right there where the Pueblo Viejo is.

Q. Do you know who showed the United States surveyors where the Pueblo Viejo is?

A. Well, he had information by a man named Manuel Hurtado which was the Pueblo Viejo, and myself and some other parties, when he asked which was the Pueblo Viejo, we told him this is the Pueblo Viejo, and we had information that is the northern boundary. I was present at that time. I believe it was in May, 1882. I do not know. I am not certain.

Q. That is all.

Cross-examination by Mr. REYNOLDS:

Q. Were you present when your grandfather and others discussed the title papers and the boundaries of this grant?

A. Yes, sir.

117 Q. You heard it many, many times?

A. Well, I heard it at that time.

Q. You heard them say that the Potrero Viejo was the north boundary?

A. No; Pueblo Viejo.

Q. You never heard them say that the Cochiti mesa was the north boundary, did you?

A. I never heard that mentioned, the Cochiti mentioned, until now.

Q. Never in your life?

A. There at—in the neighborhood.

Q. The place to where the Indians retreated, to where you have described they drove off the horses and the soldiers remained there in the mountains, is the place upon which the *the* ruins of the old pueblo is, along on the canada, isn't it?

A. The place is a little southwest, I believe, of the canada.

Q. The point of that mesa, where that mesa is situated, it has formed part of the Canada de Cochiti on the south or southwest where Cochiti is?

A. I believe it is all inside of the canada.

Q. Which?

A. This potrero; these old ruins.

Q. That potrero that lies between Pino canon and Cochiti canon is distant, isn't it?

A. Yes; it lies between Pino canon and Pueblo de las Casas; that is what the word used to mean and called all the time.

Q. What do you call the cañon through which this stream runs here?

A. The Canon de las Casas.

Q. You call that Canon de las Casas?

A. Yes, sir; that is known by that name.

Q. That is the cañon through which the stream runs?

A. Yes, sir.

Q. That runs down through the present Canon de las Casas?

A. Yes, sir.

Q. There is no other Canon de las Casas on this map, is there?

A. I could not tell about that.

Q. You never heard of the Canon de Cochiti until recently, did you?

A. The Canon de Cochiti is the place where the people had farming lands.

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Q. Now, then, the place that is called Canon de Cochiti is the place where these people had their farming lands, and those above it is known up north by another name, Canon de las Casas?

A. Yes, sir.

Q. Now, in the reconquest by the Mexican soldiers, when the Indians retreated onto the top of that potrero, did they describe them as going up through the Pino canon and going up above them on the potrero, that was above and higher than the one on which the pueblo was located, and coming down on them?

A. I remember this, certainly; they said the south boundary was the lands of the Indians of the pueblo of Cochiti.

Q. I am not asking you anything about boundaries now; I did not ask you a word about boundaries. Do you remember whether these old people told you that the soldiers in the reconquest went through Pino canon, back of where the Indian pueblo was, on top of the next mesa back, and then came down on them, didn't they?

A. They came down; yes, sir.

Q. Now, that potrero, whatever you choose to call it, where the pueblo is located, has right back of it a steep line, hasn't it?

A. Yes, sir.

Q. Now, on the south there is another potrero or mesa, isn't there?

A. A potrero is there.

Q. Is there a field on the Potrero de las Casas?

A. No; there is a potrero called there Canon de Media.

Q. You mean to say the pueblo is known as the second bench; I mean where this potrero is. I want to know if the top of this mesa, or potrero, or whatever you choose to call it, back of the field proper, where the pueblo is situated, is not that called the Potrero de las Casas?

A. Well, I think it is called Potrero de las Casas.

Q. Did you ever know—ever hear—of a place where this pueblo is located called Potrero Viejo?

A. Potrero Viejo?

Q. Yes, sir.

A. No.

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Q. Never heard it called that?

A. I used to hear it called Pueblo Viejo.

Q. I am asking you if you ever heard the potrero upon which the old ruins of the pueblo where the Indians retreated to during the last conquest—ever heard it called Potrero Viejo.

A. No.

Q. You are familiar with that country?

A. Yes, sir.

Q. Did you ever hear of this place that you have described as the

Pueblo Viejo near the Cuesta Colorado—did you ever hear it called the mesa of Cochiti?

A. No.

Q. That is all.

Mr. KNAEBEL: That is all.

120 MANUEL HURTADO, recalled by the plaintiffs for further examination, testified as follows:

Direct examination by Mr. KNAEBEL:

Q. Give, as far as you can, the pedigree of the family of Antonio Lucero, basing your testimony on your personal knowledge and acquaintance with the members of that family, as well as on the hearsay in the family about the members of the families themselves.

A. I gave their names yesterday.

Q. Give them again, of the children of Antonio Lucero.

A. Antonio Lucero, Cristoval Lucero, Miguel Lucero, Lauriana Lucero, Maria Lucero, Martin Lucero, Ignacio Lucero.

Q. That is all the children?

A. Yes, sir.

Q. From which one of these children did you descend?

A. From Martin Lucero.

Q. Did Martin Lucero leave a son Xavier Lucero?

A. Yes, sir.

Q. How many children did Martin Lucero leave?

A. His children, Xavier Lucero and Domingo Lucero.

Q. Any others?

A. And Francisca Lucero, my grandmother; Roman Lucero, Viviana Lucero, Isidro Lucero; these are the ones that I remember.

Q. You say they were the children of whom?

A. The children of Martin.

Q. Francisca, one of these children, was your grandmother, was she?

A. Yes, sir.

Q. Whom did Francisca Lucero marry?

A. She married Miguel Geronimo Hurtado.

Q. Of that marriage how many children did she have?

A. I have stated to you how many children; there is a copy of the will of my grandmother, and here are the names of some; that is the original of that will, also. (Hands Mr. Knaebel papers.)

Q. When was it made?

121 A. It says—there are the names of the sons.

Q. You may give them.

A. Maria Ascension, Santiago, Isidro, Miguel, Dolores, Juana Maria, Manuel, Antonio Jose, Maria, another names Dolores also. These are the names of nine of them.

Q. From which one of these nine did you descend?

A. From Manuel Hurtado.

Q. Manuel Hurtado was the son of Francisca Lucero y Lucero?

A. The son of Francisca Hurdato y Hurtado.
Q. This last name, Manuel Hurtado, was your father, was he?
A. He was my father.
Q. When did he die?
A. On the 15th day of January, 1877.
Q. How old was he when he died?
A. I do not know how old he was, but he was 70 or 78.
Q. And at the time of his death did he own any lands upon the Canada de Cochiti grant?
A. He did.
Q. Give the names of all the children of your father.
A. I am the oldest one of all; Manuel Hurtado is my name; Guadalupe Hurtado, Vicente Hurtado, Serafina Hurtado, Antonio Maria, and Francisca; were six in all.
Q. Did you hold a claim of one undivided sixth part of such interest in the Canada de Cochiti grant as belonged to your father at the time of his death?

Mr. TOLL: I object as leading; also as not the proper evidence of ownership.
Q. Question withdrawn.

Q. Was your father in possession of any interest in the Canada de Cochiti grant when he died?
A. Yes.
Q. Are you in possession of part of the same interest as one of his heirs?
A. I am.
Q. Are you one of the plaintiffs in the petition filed by Judge Laughlin for the confirmation of the Canada de Cochiti grant?
A. Yes.
122 Q. Who are the petitione-s with you in that petition?
A. On our side are myself, my brother Vicente, and my sister Francisca and the children of Serefina. She is already dead.
Q. Do you know the parties named as petitioners?
A. I do not know who they are. If you mention their names I will know.
Q. Did you knew Eusebio Arragon?
A. I know him.
Q. Was he a son of Pablo Arragon?
A. He was a son.
Q. Did he sell his interest to Mr. Whitney?
A. Perhaps he sold to him; I do not know.
Q. Who was Guadalupe Hurtado?
A. She was a sister of mine.
Q. Equally interested with you in the grant?
A. I understood she was equally interested, but she sold her interest to Mr. Whitney.

Mr. KNAEBEL: I offer in evidence deed of Guadalupe Hurtado to James P. Whitney dated December 20, 1881; duly acknowledged and recorded in Bernalillo county, New Mexico, December 28, 1881,

in Book "P," pages 560–'2, marked Plaintiffs' Exhibit No. 3. (Covered by stipulation.)

Mr. TOLL: I object to the admission of this deed because it is immaterial, irrelevant, and insufficient, and because it is not shown that the grantor had not conveyed the lands by proper conveyances.

The CHIEF JUSTICE: The whole evidence will be a question as to the sufficiency of evidence. We can determine as to each item of evidence. The motion is overruled.

Mr. KNAEBEL: I offer in evidence deed of James P. Whitney *et al.* to Joel P. Whitney, recorded May 21, 1884, in volume "Y," in the record of Bernalillo Co., N. M., pages 403; dated May 17, 1884, marked Exhibit No. —. (Covered by stipulation.)

Mr. TOLL: I interpose the same objection as to the last deed above offered in evidence by the plaintiffs.

No ruling.

Mr. KNAEBEL: I also offer deed dated February 19, 1881, from Eusebio Arragon to Josel P. Whitney, marked Exhibit No. —. (Covered by stipulation.)

Q. Who was Antonio Maria Hurtado, who married Hurtado Pablo Gallegos?

123 A. She is not married. She lives with me. She is not married to him. He is her brother-in-law. He is not married to her, but she lives with them.

Q. She sold to Whitney, did she?

A. She gave a lease to Joel Whitney to sell. They were the ones that sold.

Q. She had the same interest that you had in the grant, didn't she?

A. Yes.

Mr. KNAEBEL: I offer in evidence deed dated December 20, 1881, made by Antonio Maria Hurtado, by Jose Pablo Gallegos, her attorney, to James G. Whitney, duly acknowledged and recorded in *the* Bernalillo Co., N. M., on the 28 day of December, 1881, recorded in Book "P," page 569. (Covered by stipulation.)

Mr. TOLL: I make the same objection to this deed that I made to the other*s*.

Mr. KNAEBEL: I also put in evidence an ancient instrument, dated December 20, 1833, made by Franci*aca* Xavier Lucero to Pablo Arragon, marked Exhibit No. 4*a*.

Q. Was Pablo Lucero also an heir of Lucero?

A. I do not know. If he was called Francisco, probably he was.

Mr. KNAEBEL: I also put in evidence deed — Arragon to Joel P. Whitney, dated December 19, 1881, recorded April 11, 1881, in Bernalillo Co., N. M., in Book "O," pa*hes* 140–'2. (Covered by stipulation.)

Mr. TOLL: To the first instrument we object as incompetent and immaterial, because the grantor is not show- to have been an heir.

To the second instrument we make the same objection as we did to all the others which were offered.

Q. What do you say about Francisco Xavier Lucero?

A. I knew him personally. I knew him by the name of Xavier. I do not know whether he was called Francisco, though.

Q. Among the descendants, heirs-at-law, of Antonio Lucero claiming an interest in the Canada de Cochiti grant do you know a good many people?

Mr. TOLL: We desire to object to the form of the question. It is based upon the legal assumption that those people were heirs of Antonio Lucero; you are assuming heirship.

No ruling.

124 A. I know the descendants, but not all of them.

Q. Of those named Aragon do you know any named Fernando?

A. No.

Q. Francisco Aragon?

A. There are two of them. I do not know which one you refer to. One of them is Jose Francisco Arragon, the son of Jose Arragon. The other is Francisco Arragon, the son of Francisco.

Q. Both descendants of Antonio Lucero on the mother's side?

A. Jose Aragon has a right on account of his wife, and the other Francisco Aragon on account of his mother.

Q. Gregorio?

A. He is the brother of Francisco.

Q. Who is his wife?

A. Simona.

Q. The desce-dant of Antonio Lucero?

A. Yes.

Q. Jose Bernardo Aragon and wife, do you know them?

A. I know him. He is still alive.

Q. Descendants of Antonio Lucero?

A. His wife is Cecelia Baca.

Q. Jose Francisco and his wife, do you know them?

A. Yes.

Q. Descendants of A-tonio Lucero?

A. Jose Francisco is a descendant from his mother, and his wife is also a descendant.

Q. Maria Louisa Arragon, is she a descendant of Antonio Lucero?

A. I knew her. She is dead now. She was the daughter of Gaspar Lucero.

Q. When did she die?

A. She died some few years ago.

Q. Maria Isidora Arragon?

A. She is next to her. She is the daughter of Gaspar Lucero.

Q. The desce-dants of Antonio Lucero?

A. Yes.

Q. Martina Aragon?

A. She was interested through her husband.

At this poin- an adjournment was taken until Monday, September 24th, 1894, at ten o'clock a. m.

125 Pursuant to adjournment, at the hour of ten o'clock a. m., September 24th, 1894, the following proceedings were had in the above-entitled cause:

MANUEL HURTADO, still on the witness stand, testified as follows on further examination by Mr. Knaebel:

Q. Upon the list of names I handed you Saturday have you marked such names as are those of descendants of Antonio Lucero, the grantee?
A. According to my knowledge I have.
Q. Are these marked in lead pencil the marks you refer to?
A. Yes.
Q. That is all.

(List of names put in evidence by plaintiffs, being list on abstract of title filed in the case.)

Cross-examination by Mr. REYNOLDS:

Q. Did you ever hear of the Cochiti mesa being located on this grant near what is marked on this map as the Pueblo Viejo?
A. I heard the names mesa used in the grant, but to this other one.
Q. What other one do you mean? Do you mean this one on the Canada Cochiti, the mesa where the old ruins are located?
A. That is the one I heard stated by that name in the grant.
Q. Is that known as the Cochiti mesa, referring to the one at the canada?
A. From that day to this one I know it as the Potrero las Casa among the people.
Q. Is it also known as the Cochiti mesa?
A. I have so heard it called so in the grant. I cannot state positively, though.
Q. You never heard of the Cochiti mesa being here at the Pueblo Viejo, though?
A. I heard that called the Potrero Capulin.
Q. You never heard it called Cochiti mesa?
A. I never heard it called the mesa of Cochiti.
Q. That is all.

Mr. KNAEBEL:

Q. When you say that the only time you heard or have known of the Cochiti mesa is what you have heard in the grant, what do you mean by grant where this expression mesa appears?
126 A. From that one the Indians were driven the last time; that mesa—that is, the one the grant recites.
Q. You mean the paper grant?

A. I do; the papers in the grant.

Q. Now, that is the only occasion in which you ever heard the word mesa being used with reference to any pueblo, is it?

A. Yes.

Q. That is all.

Mr. REYNOLDS: That is all.

PABLO LUCERO, a witness of lawful age, being produced, *d*worn, and examined on the part of the plaintiffs, testified *in* direct examination by Mr. John H. Knaebel as follows:

Q. What is your name, age, residence, and occupation?

A. My name is Pablo Ruperto Lucero; I am 66 years old; I live at Canada de Cochiti; I am a farmer.

Q. What relation, if any, are you to the deceased Antonio Lucero, grantee of the Canada de Cochiti grant?

A. I think I am a great-grand son.

Q. What person in that family is keeper of the family papers that pertain to the family titles to real estate?

A. Myself.

Q. With the consent of the other members of the family?

A. Yes.

Q. As such custodian of the family papers, have you in your possession the original last will and testament of your deceased ancestor, Francisca Jaramillo de Lucero, widow of Antonio Lucero?

A. I have.

Q. Can you produce it? If you can, do so.

A. Yes.

Mr. KNAEBEL: We offer in evidence this will of Francisca Jaramillo de Lucero, widow of Antonio Lucero, marked Plaintiffs' Exhibit No. 8.

127 Q. Where were you born?

A. At Canada de Cochiti.

Q. By what persons was the Canada de Cochiti grant occupied and used up to the time that Mr. Whitney bought?

A. By all the persons who had possession there.

Q. What families did those persons belong to?

A. It belonged to all, except that we who were farming there the lands, and the others were scattered about.

Q. Who were the ancestors of the persons occupying it—their first ancestors?

A. The first ancester was Antonio Lucero, who was the first possessor.

Q. Do you know what the northern boundary of that land is, and according to the common repute in your boyhood of the general understanding of the claimants of the grant?

A. I have seen it stated in the grant, but I have not been there myself.

Q. What do you know respecting the locality of it?

A. I know no other thing except the Pueblo Viejo is the boundary on the north.

Q. Where is the Pueblo Viejo Cochiti?

A. That which is called that name by the Indians of Cochiti is situated somewhere on the Potrero de las Vacas.

Q. Have you always understood from what you knew from the speech of the old people that that was the old pueblo of Cochiti named in the grant?

A. Yes.

Q. What are the Indian ruins near the little canada, near the mesa, at the canada, the Indian mesa, named?

A. They are also pueblo ruins; they went there afterwards.

Q. According to tradition, if any you know, when did the Indians go to the pueblo at the canada?

A. They were conquered at those pueblos at the bottom of the canada and taken down to Cochiti.

Q. Was that the last pueblo they went to before they went to the pueblo of Cochiti—the present pueblo of Cochiti?

A. After they were conquered they were taken down to Cochiti and left under the care of a priest, and then they made an
128 attempt to kill the priest and went back again.

Q. What was the last pueblo the Indians went to before they removed to their present pueblo?

A. That was the last one; they went on the top.

Q. That is all.

Cross-examination by Mr. REYNOLDS:

Q. Where do you reside?

A. At the Canada de Cochiti.

Q. Is that mesa upon which the old ruins are lying, to which the Indians retreated at the last conquest, called the Pueblo Viejo de Cochiti?

A. Also they call that the Pueblo Viejo, because those Indians were taken down before possession was given, and this man had been a soldier, and after he came our men were mustered out of the army. He took possession. He asked for possession.

Q. Is that the old ruined Viejo Pueblo of Cochiti?

A. Of the last one.

Q. That was the reconquest of 1692–'5?

A. It might be. I do not know the year.

Q. It was the time De Vargas conquered them and took them to Cochiti?

A. Yes.

Q. Aren't there a great many ruins of old pueblos around in that section of the country?

A. There are.

Q. They call them Pueblo Viejos, don't they?

A. Not all of them. Some of them are called Pueblo Colorado or Pueblo Viejo, and the last potrero is also called Potrero Viejo.

Q. That is all.

Mr. KNAEBEL:

Q. The ruins near the canada are much older now than they were when Antonio Lucero got the grant, are they not?

A. Yes.

Q. They are all ruins now, are they?

A. Yes.

Q. Do you know that that grant calls for an old pueblo of Cochiti as the north boundary of the land?

A. Yes.

Q. What has always been the reputation among the old people in that community as to the place where that old pueblo of Cochiti is situated?

129 A. The place is there at the Potrero las Bacas.

Q. Look at this map and see if you can understand it.

A. I can understand it if you show me how.

Q. How far is the Potrero de las Vacas from the Cuesta Colorado?

A. It is near.

Q. Do you know any Arroyo de las Piedras?

A. I do.

Q. What part of the canada is it?

A. To the north of the canada, but it runs right into the stream of La Canada.

Q. Do you know the narrow place Canon Cito, which is at the northwesterly part of the canada where the wide cañon begins?

A. Yes; various cañons are separated there towa-ds the north, as, for instance, the Canon de Media and Canon del Aryo and others.

Q. Do you know the narrow, rocky Canon Cito, which is the pass through which the water flows north of the cañon proper?

A. I do.

Q. How far above that is the Arroyo de las Piedras?

A. It is near—right near; they call that Salto de Canon where the stream comes out.

Q. Is that the same arroyo as De las Piedras?

A. No.

Q. How many varas above the Salto is the Arroyo de las Piedras?

A. It is less than a mile.

Q. In what direction?

A. To the north.

Q. Is the Arroyo de las Peradas to the north of the Salto de Agua?

A. It does.

Q. About a mile to the north?

A. It is less.

Q. About how much?

A. It may be half a mile.

Q. But you are sure it is to the north, are you?

A. Yes.

Q. That is all.

Cross-examination by Mr. REYNOLDS:

Q. Do you know where the house of Antonio Lucero is situated?

A. Yes.

Q. Where is it?

A. It is right in the center of the bottom of the canada where there are some trees.

130 Q. Is it down there where they call the place of La Canada?

A. No.

Q. Which direction is it from it?

A. Somewhat below.

Q. That is all.

Mr. KNAEBEL: That is all.

Mr. KNAEBEL: If agreeable to the court, I should like, in introducing these old deeds, to pass the originals to your honors so you can see them and their marks of antiquity.

The CHIEF JUSTICE: We do not care to do that now.

Mr. KNAEBEL: We offer in evidence conveyance dated June 14th, 1788, from Andres Montoya to Manuel Montoya, solemnized before Antonio de Armenta, alcalde mayor, marked Exhibit No. 3.

Also conveyance dated December 20, 1833, from Francisco Xavier Lucero to Pablo Arragon, marked Exhibit No. 4.

Also conveyance dated April 27, 1829, from Miguel Hurtado to Pablo Aragon, marked Exhibit No. 5.

Also conveyance dated the 1 day of November, A. D. 1799, from Antonio Jose Lovato to Graviel Aragon, marked Exhibit No. 6*a*.

Also conveyance dated October 18, 1789, from Laurian Lucero to Antonio Lucero, solemnized before Antonio de Armenta, al*a*calde mayor, marked Exhibit No. 7.

Also conveyance dated January 25th, 1790, from Antonio Benito Lucero to Miguel Chaves, solemnized before Antonio de Armenta, alcalde mayor, marked Exhibit No. 8.

Also conveyance dated August 5th, 1793, from Juan Domingo Jaramillo to Alegandro Roybal, solemnized before Antonio de Armenta, al*a*lcalde mayor, marked Exhibit No. 9; also Ex. No. 9*a*.

Also conveyance dated April 15, 1797, from Ant*iono* Jose Lovato to Juan Ignatio Salas, marked Exhibit No. 10.

Also conveyance dated June 5, 1820, from Vicente Tafoya to Jose Maria Gallegos, solemnized before Juan Antonio Cabeza
131 de Baca, alcalde mayor, marked Exhibit No. 11.

Also conveyance dated March 25, 1790, from Antonio Jose Armijo to Juan Domino Jaramillo, solemnized before Antonio de Armenta, alcalde mayor, marked Exhibit No. 12.

Also conveyance dated March 1, 1816, from Antonio Rosa Lozana to Juan Domingo Apodaca, solemnized before Juan Antonio Baca, alcalde mayor, marked Exhibit No. 13; also Exs. Nos. 13*a* and 13*b*.

Also conveyance dated July 12, 1816, from Juan Ignacio Salas to Juan Gonsalas, solemnized before Juan Cabeza de Baca, alcalde mayor, marked Exhibit No. 14.

Also conveyance dated June 15, 1802, fro- Manuel Aragon to Jose Antonio Jiron, marked Exhibit No. 15.

Also conveyance dated March 1, 1816, from Juan Ignacio Salas to Jose Lucero, solemnized before Juan Antonio Cabeza de Baca, a*lacla*de mayor, marked Exhibit No. 16.

Also conveyance dated July 14, 1820, from Maria Beatriz Lucero to Lureto Lucero, solemnized before Antonio Cabeza de Baca, alcalde mayor, marked Exhibit No. 17.

Also conveyance dated December 23, 1823, from Juan Ygnacio Atensio to Antonio Lucero, marked Exhibit No. 18.

Also conveyance dated May 29, 1829, from Jose Montano to Jose de la Crus Jiron, marked Exhibit No. 19.

Also conveyance dated September 8, 1829, from Sebastian Salas to Jose Antonio Jiron, marked Exhibit No. 20.

Also conveyance dated Decamber 25, 1829, from Jose Bernal to Jose Lucero, marked Exhibit No. 21.

Also conveyance dated April 19, 1831, from Teodora Romero to Jose de la Crus Jiron, solemnized before Juan Antonio Cabeza de Baca, a*lacla*de mayor, marked Exhibit No. 22.

Also conveyance dated September 28, 1833, from Maria Beatriz Lucero to Miguel Lucero, marked Exhibit No. 23.

Also conveyance dated November 3, 1826, from Santiago Montano to Jose Lucero, marked Exhibit No. 24.

132 Also receipt for share of paternal estate, dated November 19, 1839, from Santiago Jiron to Jose de la Crus Jiron and Albino Aragon, executors, etc., marked Exhibit No. 25.

Also conveyance dated February 26, 1760, from Lau*t*riano Lucero to Antonio Santistevan, marked Exhibit No. 26.

Also conveyance dated February 16, 1765, from Miguel Lucero to Antonio Santistavan, marked Exhibit No. 27.

Also conveyance dated January 3, 1768, from Lauriano Lucero to Lugarda Valencia, marked Exhibit No. 28.

Also conveyance dated December 23, 1805, from Bartolome Valencia *et al.* to Juan Padilla, marked Exhibit No. 29.

Also conveyance dated October 16, 1832, from Santiago Hurtado to Juan Gonsalas, marked Exhibit No. 30.

Also conveyance dated May 31, 1834, from Sebastian Apodaca to Juan Padilla, marked Exhibit No. 31.

Also conveyance dated May 16, 1846, from Juan Gonsalas to Juan Padilla, mar*jed*d Exhibit No. 32.

Also conveyance dated June 20, 1786, from Migual Hurtado to Jose Maria Chaves, marked Exhibit No. 33, solemnized before Antonio de Armenta, alcalde mayor.

Also conveyance dated March 10, 1802, from Antonio Estevan Aragon to Jose Antonio Jiron, marked Exhibit No. 34.

Also fragment of conveyance authenticated before Joseph Miguel de la Pena, marked Exhibit No. 35.

Also conveyance dated March 18, 1817, from Antonio Lucero to Jose Antonio Jiron, solemnized before Antonio Cabeza de Baca, alcalde mayor, marked Exhibit No. 36.

Also conveyance dated March 18, 1817, from Manuel Gallegos to

Antonio Aragon, solemnized before Antonio Cabeza de Baca, alalcalde mayor, marked Exhibit No. 37.

Also conveyance dated August 5, 1854, from Venturo Gallegos to Jose Maria Lucero, marked Exhibit No. 38.

Also conveyance dated May 8, 1829, from Francisco Alvino Aragon to Juan Gervacio Aragon, marked Exhibit No. 39.

133 Also conveyance dated Januar- 14, 1768, from Juan Lucero to Miguel Romero, marked Exhibit No. 40.

Also conveyance dated September 1, 1707, from Miguel Lucero to Miguel Romero, marked Exhibit No. 41.

Also conveyance dated November 24, 1827, from Antonio Lucero to Lucretia Lovato, marked Exhibit No. 42.

Also conveyance dated January 10, 1868, from Antonio Jose Hurtado to M-nuel Montano, marked Exhibit No. 43.

Also certain wills dated M'ch 15, 1825, made by Jose Juan Luceros and Antonio Sefirano Lucero, executors, marked Ex. No. 44.

Also conveyance dated June 28, 1783, from Juan Epomoceno Lucero to Juan Domingo Salas, marked Exhibit No. 45.

Also conveyance dated March 13, 1855, from Santiago Aragon to Rosario Ortega, marked Exhibit No. 46.

Also conveyance dated November 23, 1780, from Antonio Archuleta to Antonio Joseph Lovato, marked Exhibit No. 47.

Also conveyances to James G. Whitney and Joel Parker Whitney, referred to in the annexed memoranda, made pursuant to stipulation between the respective attorneys.

Also translations of each and all of such of the said exhibits as appear in the Spanish language.

134 FLAVEL SIMONSON, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified, on direct examination by Mr. Knaebel, as follows:

Q. Mr. Symington, give your name, age, residence, and occupation.

A. Flavier Symington; residence, Milwaukee, Wisconsin; mechanical engineer and lumberman; fifty-three years of age.

Q. Have you had occasion lately to travel up the Canon de Cochiti?

A. Yes, sir.

Q. Could you recognize the situation of the Canada de Cochiti as laid down on this map from an examination of the map and point out the Canada de Cochiti?

A. Yes, sir.

Q. And say whether it corresponds to what you saw on the ground?

A. I think it does.

Q. How far up did you travel in that canada and when?

A. Clear out as far as to the end to which that cañon runs out and over the mountain to the north.

Q. State whether or not in your travels up that canada you saw any evidence of ancient cultivation or old cultivation.

A. I did.

Q. At what point did you see such evidences with reference to the working of mesas of that canada?

A. Well, there was some all the way along.

Q. Describe to the court these appearances, the evidences of old occupancy.

A. Well, the ground would be thrown up as though it had been cultivated by some rows of corn which had been planted, and other places as though there had been acequias built along.

Q. What evidence of habitation did you see—of former habitation?

A. I saw one place that appeared to be a foundation of a house, which I took to be a foundation; I do not know whether it was a house, though, or what it was.

Q. Square common stone?

A. Something of that kind.

Q. What did you see within the limits of the foundation?

A. I noticed a large pine tree.

135 Q. Did you hear the testimony of Mr. Harris?

A. I did.

Q. Did his testimony of such vestige of that pine tree correspond with the description you saw on the ground?

A. Yes, sir.

Q. That is all.

Cross-examination by Mr. REYNOLDS:

Q. Did you go to the top of the Cochiti mesa at the canada?

A. I did not.

Q. Do you know where the draw of the cañon is?

A. What do you mean by the draw?

Q. Do you know where the draw of a cañon is?

A. I do not know that I do.

Q. On the side where the cañon goes by that arroyo out above and below it?

A. I do not know where that place is.

Q. Were you near that draw?

A. At one end of it.

Q. How wide is it at the place you were?

A. I do not know; I did not measure it.

Q. You got your first impression, did you, observing it carefully?

A. Well, no. From the point where I was I could not see it well. I did not look at it with the idea of measuring it. I passed along the road.

Q. Did you go through the draw, or go over the hill?

A. At that place I went down here (pointing on the map).

Q. You could not go over the mountain, could you, where the draw was?

A. At this place where I was, no.

Q. How is that situated with reference to the mesa or point of the mesa that runs down to the place called the canada?

A. It is above it; upstream from it.

Q. Which is upstream from it?

A. This narrow stream here from the point of the mesa.

Q. Isn't it pretty nearly opposite the west end of that mesa—to the highest part of that mesa?

A. I could not tell. I was not at the top of the mesa.

136 Q. From the general formation, is *the* about opposite the highest cañon of that mesa?

A. I could not tell.

Q. Didn't you take a general look at it?

A. I just drove along the road.

Q. You did not examine it, going on either side of it; you did not examine the mesa that forms the cañon?

A. Not on top; no.

Q. Did you examine the side lines?

A. As I drove along the road I looked at the sides.

Q. What were you doing there?

A. I was looking at the country.

Q. How did you happen to go by the Valle mountains through the cañon?

A. They told me that was the best road.

Q. Where does this cañon head?

A. Well, about all I can say, at the top of the mountain.

Q. The first mountain?

A. The range.

Q. The first range west?

A. No; it is north.

Q. Is it the first range from the point where you started—isn't it?

A. The mountain did not run from one range north into another.

Q. Then it stops at the first range?

A. To the top there (pointing on map).

Q. Where did you say the top of the cañon is headed; where did you say you understood they headed?

A. Nobody told me where they headed.

Q. Did they head the first or second range?

Mr. KNAEBEL: I object, as it is not cross-examination. He happened to remark something about those old ruins, and I called him for that purpose.

The CHIEF JUSTICE: He testified he went up to the head of the cañon.

A. I could not say.

Q. In the examination of this ground that had been thrown up like as if corn had been planted, have you any means of knowing how ancient such evidence of cultivation were?

137 A. Nothing, only from the trees that were growing on the ground.

Q. Well, I am speaking now of the evidences on the surface of the earth, where it looked as if corn had been planted there. Could you tell anything about the seasons from the evidences you saw of cultivation, leaving out the trees?

A. No; not leaving out the trees; the other surroundings, aside

from the ground being thrown up, would give me information in regard to the age of cultivation that had been done.

Q. I am not talking now about the age of the cultivation and trees, but about the seasons that have been passing in that locality.

A. I do not know anything about the seasons.

Q. You have been here in the winter time?

A. No, sir.

Q. You have been here during this last summer?

A. Yes.

Q. What were the signs in general around those old ruins?

A. I did not look for any.

Q. You say you saw some stones there that looked as if they had been used in a foundation?

A. Yes, sir.

Q. That is all.

Mr. KNAEBEL:

Q. Did those stones look as though they had been the work of Pueblo Indians or of white men?

A. I could not tell as to that.

Q. Have you any interest in this case?

A. No, sir.

Q. You did not have the slightest idea that you would be called as a witness?

A. No, sir.

Q. Did you examine the country with reference to being a witness?

A. No, sir.

Q. Do you pretend to have a topographical knowledge of that country?

A. I do not.

Q. Nothing more than what you have observed on your travels around?

A. That is all.

Q. You are simply a gentleman here from Chicago to travel around and look at things casuaaaly?

A. I am from Milwaukee.

Q. That is all. We rest.

Mr. REYNOLDS: That is all.

138 JOHN DIXON, called for further cross-examination by Mr. Reynolds, testified as follows:

Mr. KNAEBEL: I object to the Government cross-examining the witness for the plaintiffs after the plaintiffs have closed their case.

The CHIEF JUSTICE: He can call him and cross-examine him further in reference to matters about which he has testified.

Mr. REYNOLDS:

Q. Mr. Dixon, can you state where is the Cochiti, as understood in that country?

A. The Cochiti mesa?
Q. Yes, sir.
A. They call it those ruins there.
Q. Where the Indians retreated the last time?
A. Yes, sir.
Q. Well, where is that designated on this map now?
A. It is designated as the Canada de Cochiti grant, I suppose.
Q. I am speaking now with reference to a point on this map called the Cochiti mesa.
A. You want me to point out the old ruins?
Q. The old ruins northwest from the canada, as now situated.
A. Yes, sir; it is.
Q. Now, did you ever hear of the Cochiti mesa being at a point designated on this map as the Pueblo Viejo?
A. I never heard it being there.

Mr. KNAEBEL: I object to this cross-examination on that point, as there is no difference or contention as to where the Indians retreated.
Mr. REYNOLDS: I do not desire to know anything in regard to which there is no contention.

Q. That is all.
Mr. KNAEBEL: That is all.

139 WILL. M. TIPTON, a witness called on behalf of the defendant, being duly sworn, upon his oath testified, upon direct examination by Mr. Reynolds, as follows:

Q. Mr. Tipton, are you acquainted with Prof. A. F. Bandalier and were you acquainted with him during his stay in New Mexico in 1880 to '85? Do you know when he first came to New Mexico?
A. I was acquainted with him, and my recollection is that he came to New Mexico some time prior to the fall of 1880—I do not recollect exactly the date—and he made his home here until some time in 1892.
Q. Do you know in what capacity he was in this country?
A. He was engaged in the study of archæology and ethnology particularly, and at different times was in the employ of the American Institute of Archæology, and I am under the impression, although not perfectly certain, that he did some work for the Smithsonian Institute.
Q. Were you intimately acquainted with him?
A. I was acquainted with him in the fall of 1880, but intimately acquainted with him until about 1885, and from that time up to the time he left here he was a most intimate friend. I was with him probably more than with any other person.
Q. Do you remember his being out here with the Cochiti Indian tribe?
A. Yes, sir; I recollect that he was out there.
Q. I will get you to state, if you can, from your personal knowledge of him and his work, the care, prudence, as well as the gen-

eral knowledge, he displayed in collecting his data, etc., for his reports.

Mr. KNAEBEL: I admit all that.

Mr. REYNOLDS: I desire to read from the final report of Prof. A. F. Bandelier, as a matter of archæological history of the American Indians, from chapter IV, page 139, marked Defendant's Exhibit "A," offered in evidence upon trial of the cause.

Mr. KNAEBEL: Counsel for the claimants, suggesting that he has had no opportunity to examine the contents of this report—that he has never heretofore had the subject called to his attention—
140 objects to the introduction on the following grounds: First, that the same is incompetent, irrelevant, and immaterial, and of the nature of hearsay; second, that the information the author of the report could furnish as a witness upon any subject touch-upon in the volume ought to be furnished under the rules of law and under the sanction of an oath upon the production of the author, if he is living, or upon his examined under a commission; third, that this book purports on its face to be a work of recent date, printed in 1892, and dated at Santa Fé, New Mexico, April 20th, 1891. It cannot come within the limitations of the rule under which old standard works of certain character can be introduced and read in evidence, and it is *post litem motam*, the present claim being an adverse claim against the United States, antedating the promulgation of this report, and formally presented to the proper officials of the United States as early as the year 1881, as appears by the archives in the present case. I have made these few objections now, and do not know what others I will have to make after an examination of the report.

Mr. REYNOLDS: You may have the report and decide that.

Mr. REYNOLDS: I offer this as a history of the place. The court, under the rules of evidence, can take judicial notice of the history of that country; the court can determine for itself as to the reliability of the history. Where a court is called upon to investigate matters of this kind it will take judicial notice of the history of the country. I offer this as historical matter, and it is for the court to determine whether it is reliable or not.

Mr. KNAEBEL: Your honors please, the learned counsel for the Government has introduced a work here of a living author. I think the works of Herodotus could be used, but I do not think, however reliable this author may be or how able an archæologist he may be, that his work is competent evidence that can be introduced in any judicial tribunal while he is living.

141 Mr. REYNOLDS: The author is out of the country, is he is not dead.

The CHIEF JUSTICE: We will take it subject to the objections.

Q. Mr. Tipton, do you know where Prof. Bandelier is now and where he has been for some time?

A. Until within a few months I think he has been in Peru, South America, but is now in Bolivia, so I understand.

Q. Do you know whether he was there in 1893?

A. Where?

Q. Peru.

A. Yes, sir; he was there in 1893.

Q. He was not in this country?

A. No, sir; he has not been here since some time in 1892.

Q. Now, Mr. Tipton, have you had occasion recently to visit the mesa or potrero upon which the old Indian ruins are situated near the Canada de Cochiti?

A. Yes, sir.

Q. When was that?

A. I think it was on the 6th day of August of this year.

Q. I will get you to state whether or not you found more than one sites of ruins on top of that mesa.

A. The principal ruins were divided by a wall, which appeared to make two parts or two distinct parts to the ruins, somewhat east of the principal ruins and of both parts to which I refer, upon which were evidences of the ruins of houses, which were between the larger ruins and the point of the potrero—that is, the point which is nearest to the Mexican settlement of La Canada.

Q. Now, describe that in general terms—the place upon which those ruins are situated.

A. I would call it a table-land—a mesa.

Q. Now, if you draw a line east and west through those ruins and extend it east to the Rio Grande river, how would it run with reference to the agricultural lands in the Canada de Cochiti?

A. That, of course, would depend upon what point—through what point—of the ruins the line *were* drawn. If drawn from the most northerly point of the ruins, I think a line of that kind
142 would include all the land that I saw under cultivation in the Canada de Cochiti.

Q. That is, it would leave the agricultural lands south of the ruins?

A. Yes, sir.

Q. Now, describe to the court the topography of that mesa, both east of it and west of it and on the sides. Give its general description.

A. Well, it is a mesa which lies above the surrounding country. It is higher before the Canada de Cochiti than it is before getting around to the south and southwest of it. It is extremely precipitous and rough, and I only saw one place where one could ascend to it without great difficulty. There may be others, but the pass by which we went was the only place I saw where one could possibly reach the top. It is very narrow in the southeasterly part. It is very narrow, and as it runs northwesterly it widens, and back of the ruins there is a second bench, as it were, a mesa on top of a mesa, which runs still further in a northwesterly direction back towards the mountains.

Q. Now, describe the face of the higher mesa on the northwestern mesa, on its eastern face.

A. It is very steep. I do not know what the character of the

country is on top of the second bench, except as seen from a great distance, because, standing at the ruins and looking towards the second bench of the mesa, it is impossible to see very far on top of that bench on account of the height that it lies above the lower bench. The general character of that second bench, however, as seen from a greater distance from the east side to the Rio Grande river, appears to be a country having a gentle and not very rapid rise toward the mountains until it reaches the point of what I called the mountains proper.

Q. Do you know how far back the foot of that mountain is?

A. I do not know. I could not give it with any accuracy.

Q. Well, is it well defined?

A. Oh, yes; perfectly defined.

Q. Now, Mr. Tipton, did you go—which side of this mesa did you go up on?

A. On the southwest side. The direction of it, I think, is from northwest to southeast.

143 Q. Now, did you notice any cañons, well-defined cañons, running out in the point of the mesa, running between the Pino canon and the Cochiti canon?

A. No; I did not see anything that I would call a cañon. I recollect we crossed an arroyo, a dry wash, but I did not see anything that I would call a cañon. Of course, Pino canon is on that side, but still further to the south.

Q. And how far to the southeast of the point of that mesa is the present settlement of the Canada pueblo; I mean the little Mexican town that you know of?

A. From the point of the mesa?

Q. Yes; from the southeast point of the mesa.

A. I should think it was somewhere about a mile.

Q. How far is it from that town east to the Rio Grande river in a direct line?

A. I should think, perhaps, it is five miles.

Q. Now, what is the area, about, in acres, if you can give it to me, of the first bench of that mesa on which the old pueblo is situated?

A. I never noticed it when I was there enough to make such an estimate.

Q. Well, can you give approximately the distance from the point of the mesa back to where the second bench rises?

A. I could not with any accuracy.

Q. Well, give me it as near as you can.

A. I should think the distance from the point of the mesa back to where the second bench rises was between half and three-quarters of a mile. I was not clear back to the second bench. I did not walk across the bench at that point, but I should think there was not over one hundred acres of land on that first bench.

At this point of the proceedings an adjournment was declared by the chief justice until two o'clock p. m. of the same say.

The hour of two o'clock p. m. having arrived upon the same day,

the same being September 24th, 1894, the following proceedings were had in the above-entitled cause:

144 Mr. KNAEBEL: After the courtesy offered me this morning by Mr. Reynolds in reference to the examination of the work of Prof. Bandelier, in permitting me to examine the same, I have cursorily examined the work, and I desire to withdraw my objections to the said work; I am perfectly willing to have Mr. Bandelier's work stand in this court as well as he would if he were here under oath.

Mr. REYNOLDS:

Q. Mr. Tipton, will you state to the court what the area in acres is of a piece of land designated as enough to plant ten fanegas of wheat and two of corn?

Mr. KNAEBEL: I object unless the question is confined to the land measure of fanega de sembadura. I understand the fanega is a measure of grain of about two and a half bushels.

No ruling.

Q. Mr. Tipton, is there such a thing in the Spanish language as a system of land measurement known as a fanega as to the extent of land or measure of land quantity?

A. There are two technical land measurements with which I am acquainted, one of which is designated as the fanega de sembadura de maiz and the other as the fanega de sembadura de trigo, the exact area of which is determined by ordinances upon the subject.

Q. Well, what would be the area, then—what is the area of ten fanegas of wheat or corn under either?

Mr. KNAEBEL: I object unless it is confined to fanega de sembradura.

Q. Very well; put it de sembadura.

A. The designations which I have already given of these two measurements are the correct and technical designations of them, but in documents in relation to lands which we have in the archives in New Mexico I have seen both of these measurements referred to exactly as they are referred to in this particular grant, omitting the part de sembadura. The fanega is properly a measurement of quantity, a measure for measuring grain, vegetables, and things of that kind. The area of the fanega de sembradura de maiz is,

145 in English acres, eight and eighty-two hundredths (8.82); the fanega de sembadura de trigo is one and fifty-three hundredths acres (1.53); so that the extent of the land described in the petition in this case, being two fanegas of corn and ten of wheat, would amount to a little less than thirty-three acres (33) altogether.

Q. Mr. Tipton, in examining the ruins upon the mesa at the canada, what would you say in reference to the antiquity of the two ruins?

A. In my opinion, the ruins which I saw nearest to the point of the mesa were *older* than those which were further back and nearer the foot of the second bench.

Q. Well, what would you say with reference to the relative ages of the two, not as to use, but as to general distance of time between them?

A. I should think these ruins nearest to the point of the mesa were very much older than the others, but to what extent I never had any experience that would enable me to state or form an opinion.

Q. Well, you would say they are very much older?

A. I should think so.

Q. Mr. Tipton, I wish you would take these photographs and mark on them with the figure one (1) in red ink down towards the foot of the mesa the Canada de Cochiti.

A. (Witness does so.)

Q. Take the photograph I hand you, and what is the name of the canada that you have designated by the figure one (1) in red ink at the foot of the photograph?

A. The place which I marked on this photog-aph with the figure one (1) in red ink repr/sents the Canada de Cochiti at a point where it comes out from the deepest part of the canada; also directly north of where the ruins of this old pueblo —, on top of the mesa.

Q. What is that point which you have designated in red ink with dot?

A. That point represents the top of the mesa, upon which are situated those ruins, about which I have testified.

Q. Now, what is the point which you have designated with the figure two (2) in red ink?

A. That is Pino canon.

146 Q. Now, what is the point that you have designated with the figure three (3) in several places along the photograph?

A. I have placed on this photograph four (4) figures three (3), and, beginning at the left hand of the photograph, the first one represents the arroyo of the Peralto, where it may be seen from the point where this photograph was taken. The other three figures three represent the top of the ridge which lies along the northern and southeastern sode of the Peralta canon.

Q. Now, your figure four (4)?

A. The figure four (4) represents the Canon del Alamo.

Q. Now, your honors please, I offer this photograph in evidence, and I have had this put in this shape for embodiment in the record.

Q. The figure five (5)?

A. The figure five (5) on the photograph shows the position of the present Indian town of Cochiti.

Q. I will ask this same witness to mark these same places on these other photographs that are put on cotton so they can be filed with the clerk.

Q. That is all.

Mr. KNAEBEL: That is all.

147 L. A. HUGHES, a witness of lawful age, being produced, sworn, and examined on the part of the Government, testified as follows upon direct examination by Mr. Reynolds:

Q. Mr. Hughes, where do you reside?

A. Santa Fé, New Mexico.

Q. I will get you to state if, as an agent of the Government, you had occasion recently to visit the Canada de Cochiti.

A. I did.

Q. About what time?

A. It was the early part of last August. I think on the 6th or 7th of August last.

Q. Did you visit the potrero that extends out next to the Canada de Cochiti, the plesent plaza?

A. Yes, sir.

Q. Did you go on top of it?

A. Yes, sir.

Q. I will get you to describe its general character, with reference to its general appearance of the ruin on top of it.

A. The potrero is situated probably five hundred feet above the present plaza in the Canada de Cochiti; it is very precipitous and rough, and the ascent is very difficult, and on top of the mesa it is rather level and some pine trees and some grass, and probably a mile from the point where I ascended, in the neighborhood of half a mile toward the northwest, were the ruins of an old pueblo covering probably a space of ground 250 feet long by 150 feet wide. Towards the southeast, near the plaza, is the remains of the other ruins.

Q. Those other ruins are down further?

A. Yes, sir.

Q. Now, is there another bench of the mesa? And, if so, describt the approach to it.

A. The whole country is a serios of benches; probably I could better describe it by illustrating of this kind: If the canada is here, and the Mexican settlement here——

Q. That is on the southeast side now?

A. Yes; the Mexican settlement is here, and back here is the second mesa or bench.

Q. How high is the base of that second bench, do you suppose?

A. I cannot tell you exactly; it looked very abrupt. I
148 presume it might be one hundred feet to this steppe here, possibly more; it is broken; on this side of the mesa is very steep.

Q. That is the northeast side of the mesa?

A. Yes, sir.

Q. Describe the southwest side.

A. You get there by a very difficult trail and pass over a narrow cut; it seemed to be, probably, two hundred feet high.

Q. That is what is described—look at this map, Mr. Hughes, and the mesa that you have been describing is where is marked here the ruined pueblo, is it?

A. That mesa upon which is located the ruined pueblo is here on this steppe.

Q. Now, that steepe is back of the point marked the ruined pueblo?

A. Yes, sir.

Q. How is that with reference to a retreat for a defense in a military way?

A. It would be an ideal place for a party of men to retreat to.

Mr. KNAEBEL: We admit that it is a good place of retreat.

Q. Now, Mr. Hughes, a line drawn east and west through this ruined pueblo, how would it leave the agricultural lands of the valley below?

A. Well, as far as this point, on the northeast side of this potrero, a line drawn east and west would leave all the agricultural lands below that line.

Q. You went upon the Pino Canon side of the mesa, did you?

A. It is on the side next to the Pino canon; the Pino canon does not come up to this mesa.

Q. The Pino canon is south and southwest of the ruined pueblo?

A. Yes, sir.

Q. Now, can you describe a cañon running east from the point of the mesa between the Canada de Cochiti and the Pino canon—running east toward the Rio Grande river?

A. Well, the Canon de los Casas is there, but it does not run to the Rio Grande river; it empties into the Cochiti canon southeast of the Canada pueblo, the little Mexican settlement; I drove in the Cochiti canon where the Mexican plaza is to the Pino Canon side of this potrero upon which the ruined pueblo is situated.

149 Q. Now, with reference to the relative ag-s of those two ruins upon the mesa, what would you say?

A. Well, of course the material with which the ruins were constructed would depend — the condition they were in at the present day. I did not examine into that point very closely, but I think undoubtedly the ruins toward the southeast point of the potrero are much older than the others; towards the southeast corner of the — potrero are simply of mounds of earth that are characteristic of such ruins, and the first are of stone four or five feet from the ground the entire length of the ruins.

Q. That is all.

Mr. KNAEBEL—Cross-examination:

Q. Are all the ruins you have referred to within one enclosure?

A. None in any enclosure.

Q. Are they all on the same little mesa or potrero?

A. Yes, sir.

Q. Please to look at the map on the blackboard and indicate by pencil the point at which you found the last ruin, that you deem the oldest.

A. The oldest ruin is at this point here (indicating the southeast point of potrero).

Q. That is all.

Mr. REYNOLDS: That is all.

150 W. S. LOOMIS, of lawful age, a witness produced, sworn, and examined on the part of the Government, testified, on direct examination by Mr. Reynolds, as follows:

Q. What is your business, Mr. Loomis?

A. Civil engineer.

Q. Where do you reside?

A. Bland.

Q. How long have you been a civil engineer?

A. Eight years.

Q. Do you know the location of the ruins of an old pueblo on the point of the mesa next to the present plaza of the Canada de Cochiti?

A. Yes, sir.

Q. Have you had an occasion to go there?

A. Yes, sir.

Q. Did you have an occasion to run a line from east to west from that point where they are located to the Rio Grande river?

A. Yes, sir; I did.

Q. Would the agricultural lands in the Canada de Cochiti fall north or south of that line?

A. It would fall south of it.

Mr. KNAEBEL: I object unless the witness knows where the agricultural lands are in that country and that vicinity.

No ruling.

Q. Mr. Loomis, have you had an occasion to look at the land along the line of the Canada de Cochiti up to the boxes of the cañon?

A. Yes, sir; I worked over this Mexican plaza clear to the west end of the boxes of the canada; I worked for the Allerton town-site people.

Q. You have been over it?

A. Yes, sir; several times.

Q. You know the difference between a mesa and a mountain?

A. Yes, sir.

Q. Agricultural lands and hills?

A. Yes, sir.

Q. You may now state whether or not the agricultural lands would fall north or south of that line.

A. It lies entirely to the south side.

Q. You run that line from the northeast corner of the present survey of the Indian Pueblo of Cochiti to this point of this mesa where those old ruins are located?

A. Yes, sir.

151 Q. How far is it?

A. From the northwest corner of the pueblo of the Cochiti

grant to the northeast corner of this line, 8,190 feet; it is 43 minutes west of north; I ran that line.

Q. Do you know the amount of land between the Rio Grande river, the north line of the pueblo, and up to the pueblo located on the line of the point of the mesa to where you run that line?

A. Yes, sir; five thousand acres.

Q. That is all.

Mr. KNAEBEL on cross-examination:

Q. Did you hear the testimony of Mr. Tipton?

A. You mean since dinner? I just came in the room a few minutes ago; I came in just as he went off the stand.

Q. You did not hear him testify as to how, in his opinion, a line drawn easterly from the ruins of this little mesa would place the agricultural lands, did you?

A. No, sir; I did not.

Q. Did you actually run a line through those ruins?

A. I sighted my instrument and took sight east-and-west level to get a good sight to run a chain by.

Q. Just such a sight as you would take if you made an actual measurement?

A. Yes, sir.

Q. In what point in those old ruins did you p-int the instrument?

A. To the northeast corner.

Q. Northeast corner?

A. Yes, sir.

Q. I ask you how far that northeast point of those ruins wh-re you sighted your instrument is from the most southern point of those ruins.

A. It is about two hundred to two hundred and twenty-five feet—something like that.

152 Q. Did this line, which you referred to as running from the northeast corner of the old ruined pueblo easterly, cut off the agricultural lands?

A. It cut very near between the agricultural lands and the land that was wild land.

Q. At the northeast corner of this ruined pueblo you put your instrument about two hundred feet, running at the southerly point of this ruined pueblo, and then established the marginal east line that cut the agricultural lands and left *feq* hundred feet to the north?

A. I could not see from there. You see I had to take it from the northeast or could not see at all; the bluffs are so high I could not see from any other point.

Q. You, of course, are not prepared to state that in olden times cultivation did not occur further up than this cañon?

A. Well, I never was up that cañon—that is, at that point above the boxes; I entered the mesa up above there.

Q. Are you interested at all in this land?

A. No, sir.

Q. Have you surveyed mining lands?
A. Yes, sir.
Q. Do you get your living at Bland?
A. Yes, sir.
Q. What is your profession?
A. Civil engineer.
Q. Were you employed by the grant owners down on the survey?
A. No, sir; I never was.
Q. Been employed by any squatters or trespassers to run lines?
A. Well, I have run a good many lines.
Q. Give the names of the gentlemen for whom you have run lines.
A. You mean surveyed mining lines?
Q. I mean any gentlemen for whom you have done professional work in the Territory inside of the red lines—south of the red lines at the top of this map and north of the south red line and east to the Rio Grande river and west to the mountains marked by the red line?
A. I have done some work for the Allerton town-site people and for Mr. Bailey, and I surveyed some for Mr. Lothian.
Q. Who is he?
A. He is a gentleman residing in Bland.
Q. Is he here?
A. Yes, sir.
Q. That is he (pointing to a gentleman sitting in the room)?
A. That is he.
153 Q. Did you ever survey any mining lands for him?
A. I never surveyed any mining lands for him.
Q. You surveyed the grant lines?
A. No; I never did survey grant lines; I run a line northwest of the Pueblo of Cochiti grant.
Q. To where the ruins of the ruined pueblo of Cochiti is?
A. Yes, sir.
Q. Did he tell you those were the old Cochiti ruins?
A. No, sir.
Q. Did he till you where to sight your instrument?
A. He told me where an east-and-west line would strike, and I went over and sighted my instrument.
Q. You did not do any surveying for Mr. Whitney or any grant-owner?
A. No, sir.
Q. That is all.
Mr. REYNOLDS: That is all.

Mr. REYNOLDS: I desire to offer in evidence the endorsement upon the copy of the grant papers which was offered by the counsel for the plaintiffs, signed by Antonio Cabeza de Baca; it is that part of the copy of the original grant upon the act of possession which was offered as an original, and I desire to offer that in evidence so as to complete the title papers before the court.

Mr. KNAEBEL: I interpose an objection to it because it is incompetent, irrelevant, and immaterial.

Mr. REYNOLDS: It becomes a part of the document introduced by the plaintiffs; I offer the balance of it; it is their document, not mine; it is produced from their custody, not from the Government.

Mr. REYNOLDS: Your honors please, I believe that is the Government's case.

154 WILLIAM HARRIS, recalled for further direct examination on the part of the plaintiffs, testified as follows:

Direct examination by Mr. KNAEBEL:

Q. Draw a line on the map in evidence so that it will run east and west immediately south of the ruined pueblo on the mesa as you have laid the same down on the map.

A. (Witness drawn the said line on said exhibited map.)

Q. That is all.

Cross-examination by Mr. REYNOLDS:

Q. These farming lands that you have platted on this map, Mr. Harris, just above the canada pueblo are put down approximately?

A. That is all; yes, sir.

Q. Now, have you indicated on this map that Gold hill at mineral monument of the Cochiti district?

A. I have.

Mr. KNAEBEL: I object to it because it is incompetent, irrelevant, and immaterial and assuming that there is a gold district.

Q. Will you please indicate in red ink the top of the Gold hill?

A. The red dots here and the words "mineral monument."

Q. Mineral monument of what?

A. That is all there is on the map.

Q. Who made the mineral monument?

A. It was made by Mr. Barnes for the purpose of locating claims.

Q. You mean mining claims?

A. Yes, sir.

Q. In what district is that?

A. Cochiti.

Mr. KNAEBEL: I object to it because it is assuming the existence of a legal mining district of land *sub judice*.

Mr. REYNOLDS: I did not assume that it was a legal mining district; I was simply calling his attention to the fact that it was in New Mexico.

Mr. KNAEBEL: I do not want to admit that there is a mining district.

155 Mr. KNAEBEL:

Q. Mr. Harris, when did you first hear of an attempt on the part of anybody to set up a mining district in the vicinity of Gold hill—what year and what month, about?

A. It was in the month of March, 1894, I think.

Q. 1894?

A. Yes, sir.

Q. After drawing the line which I have asked you to draw, state according to the scale of this map the distance between the two places indicated by the red line on the south boundary and the lead-pencil line parallel above it?

A. It is approximately seven thousand feet; a little over a mile.

Q. State, if you can, from your actual knowledge of the Canada de Cochiti whether the lands that have been cultivated in the past in the canada lie to the north and extend to the northeast of the lead-pencil line.

A. There is some land north of that line that bears every appearance of having been cultivated.

Q. That is all.

Mr. REYNOLDS: That is all; that is the Government's case.

This was all the evidence that was introduced in the above-entitled cause.

I, W. J. McPherson, special official stenographer, certify that the above and foregoing one hundred and seventeen pages (117) contain a full, true, and correct transcript of the proceedings had in open court in this cause, the same being No. 205, Joel Parker Whitney *et al. versus* The United States, claiming "Cochiti grant," consolidated with case No. 240, Manuel Hurtado *et al. versus* The United States, claiming "Canada de Cochiti grant," for the confirmation of said grants.

W. J. McPHERSON,
Special Official Stenographer Court of Private Land Claims, by Order of said Court Made August 13th, 1894.

156 PLAINTIFFS' EXHIBIT No. 1.

Spanish.

Antto. Lusero [roto] querque ante [roto] resco por aqu [roto] que el derech [roto] por quanto [roto] familia y no [roto] ante V. SSa. [roto] so de tierra [roto] en la Mesa de Cochiti donde estubierron retirados los indios que se sublebaron para en el sembrar y cabra en dicho pedaso de tierra, dies anegas de trigo y dos de mais, y para apastar mi ganado menor y Cavallada, y luida dicha tierra por la parte del norte con el Pueblo Viejo de Cochiti, y por el oriente con el Rio del Norte, y por el Sur con tierras de las naturales de dicho pueblo [roto] el poniente con [roto] de Xemes con sus [roto] salidas abreva [roto] y Servidumbres [roto] lo en perjuisio de [roto] de serbir VSSa. de [roto] ersed en nombre [roto] gestad por todo [roto] lico provea y mau [roto] do que resivire [roto] rsed y juro por Dios Nuestro Señor no ser de malicia en lo necesario &a.

ANTTO. LUCERO.

Villa de Santa Feé, Agosto 2 de 1728, ante el Sr Governador y Capn. General deste reino de la Nueva Mexico se presento
157 por el contenido, y por su Ssa. bista la hubo por presentada y rejis [roto] la tierra que la parte pide pa cuio efecto mau da [roto] do alcalde maior de San Philipe Santo Don [roto] y Cochiti pase y reconosca dho. pedaso de tierra co [roto] tasion de los naturales de dho. pueblo y otros que a [roto] ynmediatos y aviendo qualquir oposision [roto] suspenda y no abiendo enbaraso y siendo sin perjui [roto] de tersero que mejor derecho tenga se le ase [roto] mersed en nombre de su Mgd. i le metera e [roto] posesion Rl. y personal debajo de los li [roto] ros que sita de la cual abiendo la [roto.]

Respectfully, FISKE & WARREN,
158 *Att'ys for J. P. & J. G. Whitney, Claimants.*

PLAINTIFFS' EXHIBIT No. 2.

Es copia.

Antonio Lucero vecino de la villa de Alburqqe. ante la grandeza de V. S. paresco por aquella via y forma que el derecho me concede; y digo que por cuanto me hayo casado y con familia y no tener donde vivir, ante V. S. registro un pedaso de tierra realengo que se hada en la Mesa de Cochiti donde estubieron retirados los indios que se sublevaron para en el sembrar y labrar en dho. pedaso de tierra dies anegas de trigo y dos de mais, y para pastear mi ganado menor y caballada y linda dha. tierra por la parte del norte con el Pueblo viejo de Cochiti, y por el oriente con el Rio del Norte, y por el sur con tierras de los naturales de dho. pueblo, y por el poniente con la sierra de Jemes, con sus entradas y salidas abrevaderos usus y serbi dumbres, y no siendo en perjuicio de tercero se ha de servir V. S. de aserme merced en nombre de su Magestad por todo lo cual—A V. S. pido y suplico provea y mande como pido que recivire bien y merced, y juro por Dios nuestro señor no ser de malisia en lo necesario &a.

ANTONIO LUCERO.

159 Y por su S. S. vista la hubo por presentada y registrada la tierra que la parte pide para cuyo efecto manda y mandó al Alcalde Mayor de San Phelipe, santo Domingo y Cochiti pase y reconosca dho. pedaso de tierra con citacion de los naturales de dho. pueblo y otros que aian imediatos y haviendo cualesquier oposicion se suspenda; y no haviendo embaraso y siendo sin perjuicio de tercero que myor derecho tenga se le hace la merced en nombre de su Magestad y le metera en posesion Rl. y personal de vajo de los linderos que cita de la cual haviendola adquirido quieta y pasificamente no sea desposeido y la goze el y sus erederos con advertencia que la pueble detro del termino que disponen reales ordenanzas y hasi lo decretó mandó y firmó por ante mi el precente secretario de Governacion y Guerra doy fee, y dada dha posesion devolvera el original para que se le de testimonio.

BUSTAMANTE.

Por mandado del Sor. Governador y Capitan Gral.

ANTONO. DE GRUCIAGA,
Secretario de Governacion y Guerra.

Villa de Santa Fee y Agto. 2 de 1728, ante el señor Governador y Capitan Gral. de este Reyno de la nueba Mexco. se presentó por el contenido.

En este puesto de la Cañada de nuestra señora de Guada-
160 lupe en seis dias del mes de Agosto del año de mil setecientos veinte y ocho, yo el Alcalde Mayor del Pueblo de Cochiti, Santo Domingo y San Phelipe le diposesion en nombre de su Magestad de las tierras que en esta merced se dicen y mencionan al interesado y haviendolas registrado tome a Antono. Lucero de la mano y lo pasie por dha. tierra en señal de lexitima posecion y no haviendo persona alguna que por myor derecho las demandare la di por buena y en señal de verdad ago mi firma acostumbrada ante los testigos de mi asistencia.

El Capitan ANDRES MONTOYA.

Arruego de—
JOSEF SANTIESTEVAN.
ANDRES MONTOYA.

Es copia cierta fiel y legal de los documentos de merced que se refier en los que por estar truncos y muy mal tratados se ha sacado esta copia con vastante trabajo ante los testigos de mi asistencia quienes la bieron sacar corregir y enmendar de los instrumentos originales para que en todo tiempo conste precentados ante mi D. Juan Antonio Caveza de Baca Alcalde Maior de Cochiti y su jurisn. autorisandolos en devida forma en treinta dias del mes de Dbre. del año de mil ochosientos dies y siete, y en testimonio de verbal la firme con los testigos como dicho es de que doy fee.

JUAN ANTTO. CABESA DE BACA.

Asia.: JUAN ESTEVAN ARAGON.
Asia.: JUAN GONSALES.
Asia.: SEBASTIAN SALAS.
161 Asistencia: LUIS MA. CABESA DE BACA.

Ante mi Dn. Juan Antonio Cabesa de Baca Alcalde Mayor de esta juridicion de Cochiti y los testigos de mi asistencia ceden el mismo derecho qe. los legitimos erederos de esta merce en cuantos vivientes hayga en dho citio por haber contribuido todos en comun a pagar el y porte de derechos de esta merse y para que en todo tiempo coste lo firme como dicho es de que doy fe.

JUAN ANTTO. CABESA DE BACA.

Asia.: JUAN ESTEVAN ARAGON.
Asia.: JUAN GONSALES.
Asia.: SEBASTIA SALAS.

PLAINTIFFS' EXHIBIT NO. 3.

En bista del escrito presentado por los herederos del difunto Antonio Lucero en que me hasen patente el agrabio que se les hase en querer que el paraje que elaman de la Cañada de Enmedio, se quede solamente reserbado para caballerias por el pedimento ó suplica que hiso Antonio Gallego vecino de la expresada Cañada de Cochiti al Señor Coronel de Cavalleria Govor. Politico y Militar Dn. Juan Bapta. de Anza, digo, que abiendo yo el nominado Alcalde Mayor y Capitan á Guerra Dn. Antonio de Armenta dado parte á mi superior Gefe de lo presentado por dichos mensionados herederos me respondio su Geñoria que una vez que se opone el comun de
162 sus convesinos que gozen los expresados herederos de aquello que tan legitimamente es suio pues deben ser preferidos á todo particular, y mas quando por todas bias son los lexitimos acredores a dicho sitio, y era haserles un agrabio bien doloso y mas quando estos tienen sus ganados, y mañana y otro dia pueden pastarlos en dhó. sitio como suio que es y quererselos impedir dho. Gallego con el pretesto de estar reserbado para solo cavallerias por lo que no les acomodo dha propuesta y ocurrieron a mi como su Alcalde Mayor para que si era justo o si lo allaba por conbeniente el que se quedava para ele fin que espone dicho Gallego, les respondo que mas derecho les biene a ellos por motibo de ser ellos los mas acredores por todos motibos que no an yndibiduo que por solo favor se le abia dado lisencia para que criara unas pocas de obejas i de hai queria llamarlo suio sin tener ningun titulo ó documento que pudiera acreditarlo ser suio por lo cual y por la facultad que me es conferida les doi el presente instrumento para que en qualquier tribunal ó jues que sea presentado seau oidos en justicia por el dro. que desde sus abuelos y padres adquirieron por merced real (que su M. Dios le guarde) les hiso á dhos. sus abuelos y para que asi conste en todo tiempo di el presente instrumento firmado de mi mano y con los infraescriptos testigos de mi asistencia en este Pueblo
163 de Gan Buenaventura de Cochiti endos dias del mes de Nobiembre de mil setecientos ochenta y cinco años á fatta de escribano Pubco. ni real que de ninguna clase los hai en toda esta Governacion doi fee.

ANTONIO DE ARMENTA.

To.: JOSE DE ARMENTA.
Tto.: SIMON DE ARMENTA.

Señor Alce. Mor. y Cappn. a Gera Dn. Antonio de Armenta:

Antonio Luzero de Godoi) Jose Antonio Luzero) Migl. Luzero Ynasio Luzero) Franco. Luzero) Loreto Luzero) Xabier Luzero) Antonio Jose Lobato) Ramon Gallego) Cayetano Montaño) Bernabe Gallego) Juan Epomuseno Luzero.

Oriemdos de este Reino besinos y erederos atuales del puesto de nuestra Señora de Guadalupe juridision de la cañada de Cochiti ante Vmd. paresemos en la mejor forma que alla lugar y al nuestro conbenga y desimos señor por lo que cenos ase patente de nuestras

tieras y dominios catolicos a el fin ultimo que nuestro Thente. cenos biene entrando en asernos en nuestras tieras y dominios una ceparacion para el fin de pastar en ello la corta cabalgadura que tenemos para el Real serbisio di G. Magd. á guien Dios Ge. y mallor seguridad á lo que desimos señor que ese favor de nuestro Sr. Thente. nos es muy doloroso a dho. favor y al bien que nos progura no
164 somos condesendidos porque nuestros padres y abuelos nos dyaron dho sitio y gualmente a todos para que con la bendision de Ds. y la de sus mersedes lo gosaramos todos sin que ninguno fuese pribado de ninguna asion con lo que a cada uno Dios fuera serbido darle.

Y por tanto a Vmd. pedimos y suplicamos con el Mor. vendimiento de nuestra obligacion se cirba en determinar lo que allare en justisia nos convenga que en aserlo recebiremos de Vmd. gran merze y justicia que pedimos y juramo en debida forma de dro. por Dios N. S. y la señal de la Sta. cruz no ser de malisia este nuestro pedimento y en lo nesesario &a. Aruego de todos los espresados.

CAYETANO MONTAÑO.

165 (*Translation.*)

PLAINTIFFS' EXHIBIT No. 1.

Antonio Lucero.—Cañada de Cochiti Grant.

Translation.

I, Antonio Lucero * * * * * *
querque before * * * * * *
appear through that * * * * * *
which the law * * * * * *
whereas * * * * * * *
family and not * * * * * *
before Your Excellency * * * * * *
cel of land * * * * * * *
upon the mesa of Cochiti, to where the Indians who rebelled retreated, to plant thereon, and the said piece of land will contain about ten fanegas of wheat and two of corn, and to pasture my sheep and horse herd, and the said land is bounded on the north side by the old pueblo of Cochiti, and on the east by the Del Norte river, and on the south by the lands of the natives of said Pue *
the west with * * * * * *
of Jemez with its * * * * * *
exits watering * * * * * *
and rights of way * * * * * *
ing in prejudice of * * * * * *
Your Excellency will please to * * * * * *
grant in the name * * * * * *
166 jesty, for all * * * * * *
quest provide and ord * * * *
for I will receive * * * * * *
grace; and I declare by God our Lord that this is not in dissimulation and as is necessary, etc.

ANTONIO LUSERO.

VILLAGE OF SANTA FÉ, *August* 2, 1728.

This petition was presented by the party therein before his excellency the governor and captain general of this Kingdom of New Mexico.

And the same being examined by His Excellency he treated the same as presented and regis * * * the land which the party asks, and for which purpose he ordered * * * ed that the chief alcalde of San Felipe Santo Dom * * * and Cochiti to proceed and examine said piece of land by * * * tation of the natives of said pueblos and others who may live near, and there being any opposition to suspend, and there being no impediment and it being without prejudice to a third party having a better right the grant is made to him in the name of His Majesty, and he will be placed in royal and personal possession under the boundaries he refers to and of which having acquired it * * *

167 (*Translation.*)

PLAINTIFFS' EXHIBIT NO. 2.

Antonio Lucero.—Cañada de Cochiti Tract.

Translation.

I, Antonio Lucero, a citizen of the village of Albuquerque, appear before the highness of Your Excellency through that channel and form which the law concedes to me, and state, that whereas I am married and have a family and having no place to live I register before Your Excellency a piece of land royal domain, which is situated upon the mesa of Cochiti, to which the Indians who rebelled retreated, to plant thereon and on said piece of land to cultivate ten fanegas of wheat and two of corn, and to pasture my small stock and horse herd, and said land is bounded on the north side by the old pueblo of Cochiti, and on the east by the Del Norte river, and on the south by lands of the natives of said pueblo, and on the west by the Jemez mountain, with its entrances and exits, watering places, uses, and customs, and it not being in prejudice of any third party Your Excellency will please to make to me a grant in the name of His Majesty: In consideration of all which I ask and pray that Your Excellency provide and order as I request, whereby I will receive benefit and grace, and I declare by
168 God our Lord, that this is not in dissimulation and as is necessary, &c.

ANTONIO LUCERO.

VILLAGE OF SANTA FÉ, *August* 2, 1728.

This petition was presented by the party therein, before his excellency the governor and captain general of this Kingdom of New Mexico.

And the same being examined by His Excellency he treated the same as presented, and the land which the party applies for being

registered he for that reason does direct and did direct that the chief alcalde of San Felipe, Santo Domingo and Cochiti go and examine said piece of land citing the natives of said pueblos and others who may live adjoining and there being any opposition to cease, and there being no obstacle and it being without prejudice to any third party having a better right, the grant is made to him in the name of His Majesty, and he will be placed in royal and personal possession under the boundaries he refers to and of which having acquired the same quietly and peaceably he shall not be dispossessed and he and his heirs may enjoy the same with the charge that he shall settle the same within the time the royal ordinances prescribe. And he thus provided commanded and
169 signed before me the present secretary of state and war, to which I certify, and said possession being given he will return the original so as to furnish him a duplicate.

BUSTAMANTE.

By command of his excellency the governor and captain general.

ANTONIO DE GRUCIAGA,
Secretary of State and War.

At this place of the cañada of our Lady of Guadalupe on the sixth day of the month of August in the year one thousand seven hundred and twenty-eight, I the chief alcalde of the pueblos of Cochiti, Santo Domingo and San Felipe, did give unto him the party interested in the name of His Majesty possession of the lands expressed and mentioned in this grant, and having registered the same, I took Antonio Lucero by the hand, and conducted him over said land in sign of lawful possession and there being no person whatever who under a better right might claim the same, I deemed it good, and in sign of the fact I make my customary signature before my attending witnesses.

CAPTAIN ANDRES MONTOYA.

At the request of—

JOSE SANTIESTEVAN.
ANDRES MONTOYA.

It is a true faithful and legal copy of the documents of
170 grant to which they refer of which as they are incomplete and very badly treated this copy has been made with great labor before the witnesses of my attendance who saw it made corrected and amended from the original instruments, so that it may in all times so appear, and which were produced before me Juan Antonio Cabesa de Baca, chief alcalde of Cochiti and its jurisdiction, I authenticating the same in due form on the 30th day of the month of December in the year eighteen hundred and seven-

teen, and in testimony of the fact I sign the same with the witnesses as aforesaid, to which I certify.

JUAN ANTONIO CABESA DE BACA.

Attending:
JUAN ESTEVAN ARAGON.
Attending:
JUAN GONZALES.
Attending:
SEBASTIAN SALAS.
Attending:
LUIS MARIA CABESA DE BACA.

Before me Juan Antonio Cabesa de Baca chief alcalde of this jurisdiction of Cochiti and the witnesses of my attendance do cede the same right which the legitimate heirs of this grant to all there may be living upon said tract, they having contributed all in common to paying the amount of fees for this grant, and that it may so appear in all time I signed this as aforesaid, to which I certify.

JUAN ANTONIO CABESA DE BACA.

Attending:
JUAN ESTEVAN ARAGON.
171 Attending:
JUAN GONZALES.
Attending:
SEBASTIAN SALAS.

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, *May 13th*, 1881.

The foregoing is a correct translation made by me from the original in Spanish on file in this office in private land claim file number 95 in the name of Antonio Lucero.

DAV. J. MILLER, *Translator.*

(*Translation.*)

PLAINTIFFS' EXHIBIT No. 3.

Antonio Luccro.—Cañada de Cochiti Tract.

Translation.

His honor the chief alcalde and war captain Antonio de Armenta:

We, Antonio Lucero de Godoi, Jose Antonio Lucero, Miguel Lucero, Ygnacio Lucero, Francisco Lucero, Loreto Lucero, Xabier Lucero, Antonio Jose Lovato, Ramon Gallegos, Cayetano Montaño, Bernabé Gallego, Juan Epomuseno Lucero, natives of this kingdom, actual residents and heirs of the place of our Lady of Guadalupe, jurisdiction of the Cañada de Cochiti, appear before you in the best form having place and to ours proper and state, sir, as it is patent concerning our lands and Catholic possessions as a final

resort that our lieutenant is coming upon us by making a
172 separation among us upon our lands and possessions with the purpose of pasturing thereon the few cavalry we have for the royal service of His Majesty, whom may God preserve, and for better protection concerning which we declare sir that that favor of our lieutenant is very grievous. So that favor and benefit which he attempts for us we are not consented for our fathers and grandfathers left the said tract to us equally to all, so that with the blessing of God and that of themselves we might all enjoy the same without any one being deprived of any right, which God may be pleased to grant to every one.

And therefore we ask and pray with the greatest submission to our duty that you be pleased to determine what you shall find is in justice due to us, for by so doing we will receive from you great grace and justice which we seek; and we declare in due form of law by God our Lord, and the sign of the holy cross, that this our petition is not in dissimulation and as is necessary &c.

At the request of all the aforesaid.

CAYETANO MONTAÑO.

In view of the petition presented by the heirs of deceased Antonio Luzero in which they make patent to me the injury which is done them in desiring that the Cañada de en Medio, so
173 called, remain reserved solely for cavalry upon the petition or request which Antonio Gallego a resident of the said canada of Cochiti made to Don Juan Bautista de Anza colonel of cavalry civil and military governor, I state that I Antonio de Armenta, the said chief alcalde and war captain, having made report to my superior chief of what was presented by the said mentioned heirs, His Excellency answered me that any time that the community of their neighbors objected that the said heirs should enjoy what is so lawfully their own, for they should be preferred to every individual, and furthermore when they are in all respects the legal heirs to said tract, it was doing them a harm very grievous, and also when these have their stock and tomorrow or any other day may pasture them upon said tract as their own, which it is, and said Gallego wanting to prevent them under the pretext that it is reserved for cavalry only, wherefore they did not accede to that proposition and they came to me as their chief alcalde to know if it was just or if I found it to be proper that it should remain for the purpose that said Gallego states. I answer that more right attaches to them for the reason of their being in all respects more entitled than an individual to whom by favor only had been given permission that he might raise a few sheep and hence wanted to call it his own,
174 without having any title or document which might accredit its being his; wherefore and under the authority which is on me conferred I give them the present instrument so that before any tribunal or judge, it shall be presented they may be heard in justice with the right which since their grandfathers and fathers they acquired by royal grant, which His Majesty (God preserve him) made to the aforesaid their grandfathers.

And that it may so appear in all time I give the present instrument signed with my hand, and with the undersigned witnesses of my attendance at this pueblo of San Buenaventura de Cochiti, on the second day of the month of November year one thousand seven hundred and eighty-five, for want of public or royal notary as there is none of any kind in all this jurisdiction, I certify.

ANTONIO DE ARMENTA.

Witness:
JOSE DE ARMENTA.
Witness:
SIMON DE ARMENTA.

175 PLAINTIFFS' EXHIBIT No. 3*a*.

(Spanish.)

En este puesto de Nuestra Senora de Guadalupe de la Canada de Cochiti jurisdicion de los Queres en catorse dias del mes de Junio de mil setecientos ochenta y ocho anos comparecieron ante mi dicho alcalde mayor y capitan de Guerra Don Antonio de Armenta la persona de Andres Montoya y Manuel Montoya, hijo del espresado Andres Montoya y ambos vecinos de dicha canada de cohiti, a quienes doy fee conosco, y digo dicho andres que por quanto de alla en dicha canada con una casa y tierra que hubo por compra al dicho difunto Manuel Gallego como consta por su instrument dado por dicho difunto, dijo el nominado Andres Montoya que daba y dio a su hijo Manuel la dicha casa que se compne de dos piesas con mas noventa varas de tierra que estan junto al la dicha casa, que se compone de oriente a poniente y de norte a sur de la loma al rio, con mas doscientas treinta y seis varas de largo que estan in la otra banda del dicho rio, y por el poniente lindan con tierras de Francisco Lucero y por el oriente con tierras de Miguel Ortis, y asi dicha casa como tierras se las adjudica ya propia al espresado su hijo, por herencia paterna que le tocaba en la cieneguilla y para que aora ni en ningun tiempo le salgan al separo los demas hijos de dho. Andres, a su hermano Manuel le da el presento instrumento para que aora ni en ningun tiempo le salgan al re poro algunos de los nietos u otros erederos y que si acaso alguno quisiere salis que no sean oidos en juicio ni fuera de el pues lo posee en buena fee y lo pueda gozas libremento por si sus hijos y demas erederos libre y espantoneamente y pueda combiarlo, benderlo o enagenarlo a la persona o personas que fuese su voluntad que no habra quien le ponga impedimiento ninguno. pues como propio puede usar de ello. y para que este instrumento tenga la fuerza y balidacion que por derecho se requires rogamos al dicho alcalde mayor que interpusiera su derecho judicial y yo dicho alcalde dije que lo interponia y lo interpuse cuanto por derecho me es conferido y lo firmo conmigo dicho Andres y los testigos de mi asistencia, con quienes auto a falta de escribano publico ni real que de ninguna clase lo hai en esta Governacion y en fecha en dicho dia mes y ano de que doy fee.

ANTONIO DE ARMENTA.
ANDRES MONTOYA.

Witnesses:
SANTIAGO.

176 PLAINTIFFS' EXHIBIT No. 3*a*.

Translation.

In this place of our Lady of Guadalupe of the Canada of Cochiti, jurisdiction of the Queres, on the 14th day of June, 1788, personally appeared before me the said alcalde mayor and capitan de guerra, Don Antonio de Armenta, Andres Montoya and Manuel Montoya, son of the said Andres Montoya, and both residents of the said Canada de Cochiti, whom I know and accredit and the aforesaid Andres said he has in said canada a house and land he bought from *from* the late Manuel Gallego, as it is according to his document given by said Manuel Gallego, and said the aforesaid Andres Montoya that he gave and did give to his son Manuel, the said house which is composed of two rooms, with ninety varas of land more which are adjoining the said house, which is from e-st to west and from north to south, from the hill to the river, beside two hundred and thirty-six varas long which are on the other side of said river; its boundaries are on the west with lands of Francisco Lucero and on the east with lands of Miguel Ortis and so the said house with lands he awards them to his said son as inheritance on the part of his said father, from his share on the cieneguilla, and that neither now nor at any other time the other children of said Andres will dispute it, and to their brother Manuel he gives the present deed that neither now nor at any other time the grandchildren nor any other person will dispute it, and if they should dispute it that they may not be heard in court nor out of it as he possesses it in good faith, and may enjoy it freely, himself and his children and other heirs, free and voluntarily, and he may exchange, transfer or sell it to any person or persons he may please without impediment from any person and he may use the same as his own, and that this document may be valid and in force we request the said alcalde mayor to exercise his judicial authority, and I said alcalde said that I would exercise it and did exercise it, all which by law is conferred upon me, and the said Andres and witnesses of my assistance signed it with me in the absence of a notary either royal or public, of which there is none in this government, and done on said day, month, and year, which I certify.

ANTONIO DE ARMENTA. [RUBRIC.]
Witnesses: ANDRES MONTOYA. [RUBRIC.]
SANTIAGO. [RUBRIC.]

177 PLAINTIFFS' EXHIBIT NOS. 4 AND 8.

En el nombre de Dios ntro Sor. Amen. Sepan cuantos esta carta de mis testamentos y ultima y postrimera volundad vieren como yo Francisca Jaramillo besina de este reino de la nueba Mexico hija legitima de Cristobal Jaramillo y de Casilda difuntos enferma en cama de enfermedad que Dios Nuestro Sor. asido servido de darme y en mi entero juysio voluntad y entendiemento creyendo

como creo en el misterio de la Santisima Trinidad, padre hijo y espiritu santo tres personas distintas y un solo dios verdadero y en todo aquello que nuestra snata madre yglesia catolica y apostolica romana confiesa y cree poniendo por mi intersesora a la bienaventurado siempre virgen maria los santos apostoles San Pedro y San Pablo Senor Sn. Franco. Snto de mi nombre para que rueguero a Dios por mi alma temiendome de la muerte que es la cosa natural deseando poner mi alma en carera de salvasion ordeno mi testamento en la forma y manera siguiente.

Primeramente encomiendo mi alma a Dios que la crio y redemio con su preciosa sangre y el cuerpo a la tierra de que fue mado. y ten declaro que fui casada y belada segun orden de ntra santa *mad* madre yglesia con Antonio Lucero y durante ntro matrimonio hubimos y proqueamos seis hijos barones y una muger, Antonio, Cristobal, *Mar* Maria, Ygnacio, Martin, Miguel, Laureano, los que declaro por mis hijos legitimos yten declaro que cuando contrai dicho matrimonio me dio en dote dho. mi padre un pedazo de tierras diez reses y cien cabezas de ganado menor y dicho mi marido no trujo mas que sus armas y soldados que era soldado.

Yten. declaro que es mi voluntad que si Dios fuere servido de llevarme de este presente vida mi cuerpo sea amortazado con el abito de mi pe. San Francisco y seputado en la yglesia de este pueblo de No. pe. Sn. vuena ventura de Cochiti y si fuere hono competente se me diga misa de cuerpo presente y se me manden decir dos novenarios y lo demas lo dejo a la voluntad de mis erederos. yten. declaro que la casa de me vivienda separo un cuarto para mi hijo Ygnacio y los demas se para un por iguales partes los demas herederos.

Yten. declaro que dejo un sitio de tierras en la canada de cochiti que hubo mi marido de merced que sus linderos costaran para la merced escalfando una parte que se ha vendido entre varios sujetos que son los siquientes Jose Pedro Archuleta, Gregorio Gallego, Tomas Gallego, Jusefa Butierrez, Diego Gallegos y todos estos costa por sus escrituras, menos lo de Diego Gallego que eso les costa a mis herederos.

Yten declaro que compramos entre yo y mi yerno Martin Gallego un pedazo de tierra a Felipe Silva y le dimos dosientos pesos ciento cada uno y se partira por yguales partes.

Yten declaro que debo quince pesos a Felipe Silva; yten declaro que debo un buey a Josephe Sanches; yten; declaro que debo a Juo. Vegil un par de medias; yten, declaro que me debe manuel Gallego un patio; yten. declaro que le tengo dado a mi hija maria Lucero treinta y una cabezas de ganado menor y un potro; yten. decalaro que le tengo dado a mi hijo Ygnacio veinte y sinco cabezas de ganado menor; yten declaro que tengo dado a mi hijo Antonio veynte y cinco cabezas de ganado menor; yten. declaro que dejo en albuquer*aqe* un pedazo de tierra que hubo mi marido en venta real del difunto mi padre que costa por la escritura y un *ped* pedazo que truje en dote de dicho mi padre; yten. declaro que dejo ciento y nobenta y tres obejas; yten declaro que dejo buelles; yten declaro una achaque le dejo a mi hijo Laurenano; yten. declaro una car-

reta; yten. declaro una vaca que le dejo a mi hijo Antonio
178 y el beceno a mi hijo Laureano; yten. declaro que cuatro bestias que tiene mi hijo Martin me costa ser sullas que el las ha buscado; yten. declaro que le ago gracia y donacion a Diego Aragon de al mitad de un pedazo de tierra que mi marido le avia dado con su solar de casa y esta espara que la gose sin dar perjuicio a mis hijos sinoque si en algun tiempo lo quisiere vender que sea a mis herederos; yten. declaro que le dejo a mi India, Rosa, por aberme servido un pedaso de tierra de cien varas en quadro y un solar de casa y unas cabras que les costa a mis hijos ser suyas que la dha. l as declara y es mi voluntad; yten. declaro un pano de reboso a mi hijo Miguel; yten. declaro que dejo a mi hijo Martin unas naguas de gerga; y pagados todos mis funeral es y mandos forsosos de partiran por iguales partes mis herederos para que con la bendicion de Dios y la mia lo gocen y para cumplir este mi testimento nombro por mis albaceas a Josephe Jaramillo en primer lugar, a Martin Gallego en segundo, a Cristobal Lucero en tercero para para que estas administren mi ultima voluntad a las que suplico separtan por iguales partes a mis herederos que lo son mis legitimos los mencionados y reboco y anulo otras qualesquier testamentos memorias codisilias que antes de este aya echo y solo este valga y para su firmesa y validacion supiice al Sor. Alcalde Mayor Bartholome Fernandez de la Pedrera interponga su autoridad— e yo dicho alcalde mayor es*at*ndo presente a su otorgamiento doi Fee la a la otorgante quien esta en su entero juysio e ynterpongo e yenterpuse mi autoridad y decreto judicial en cuanto puedo y debo y no firmo por no saber firmarlo yo con los testigos ynfranscritos de mi asistensia con quienes actuo como jues xesefox por no aber escribano publico ni real en este reino y en este papel por no corer el sellado de jues doi fee.

BARTHOLOME FERNANDEZ DE LA PEDRERA. [RÚBRIC.]

MANUEL TENORIO DE ALBA. [RUBRIC.]
MIGUEL THENORIO DE ALBA Y CORONA. [RUBRIC.]

En este paraje y puesto de la canada de cochiti en biente y cuatro dias del mes de enero de mil setecientos y cincuenta y cinco anos ante mi Miguel Thenorio de Alba autual Thc. de dha. jurisdicion parescieron Josephe Jaramillo Martin Gallego y Cristobal Lucero como al baceas de Franca. Jaramillo difunto viuda que fue de Antto. Lucero y dijeron que en vista de aber ordenado la dicha difunta su testamento me hacian presentacion del para que por mi y por ante mi se diese el debido cumplimiento de los dhos. legados
179 asiendose la repartision de los espresados las dhos. legados asiendose la repartision de las espresados bienes en dho. testamento los quales quedaron a bene ficio de sus herederos y allando y teniendo por muy justo lo que se me pide debia mandar y mande a dhos albaceas traigan todos los bienes que en el espresado testamento se mencionan para veinte y cuatro de este mes de Enero y se prosedera hacer el repartimiento entre todos los herederos de dha. defunta asi lo determine y mande y firme actuando como jues

destos conbesinos a falta de escribano real que no hay en este reino de que doy fee en dho. dia mes y ano.

MIGUEL THENORIO DE ALBA. [RUBRIC.]
DIEGO ARAGON. [RUBRIC.]

Y hecho repartimiento de los bienes muebles entre los eredores de dha. difunta le toco a Antto. Lucero setenta y dos pesos y en obehas, y a Cristobal setenta pesos en obejas y se le acabalo con tierra doce ps. que vai a decir Maria Lucero setenta y dos pesos en obejas Ygnacio Lucero sincuenta y siete ps. y se le acabalo con tierra, Martin Lucero, cincuenta y nuebe pesos y se le acabalo con tierra. Meigl. sincuenta y seis pesos y se le acabalo con tierras. Laureano sincuenta y ocho ps. y se le acabalo con tierra a setenta y dos ps. que tenian resebido los que primero se habian casado y echo este pase a las tierras de labor y estando en ellas medi las dhas. tierras con vara castellana y tubieron de orte a poniente y tubieron de oriente a poniente tubieron sinco mil dosientos y veinte y dos de las cuales les tocaron Antto. Lucero 8 cientas varas a cristobal ochocientas y diez mas que se le acabalo dose ps. que los primeros habian resevido de dote, Maria Lucero ochocientas varas que sus hermanos le ysieron grasia y donacion por haber quedado junto a sus tierras de las que hubieron en venta real la difunta y Martin Gallego que no se abian repartido asta la presente que les partimos yo dho. Th. de Alcalde Mayor y al bacea Jophe Jaramillo, Ygnacio le tocaron ochocientas varas con mas diez que les emos acabalo Martin Lucero Ochocientas varas con diez mas para acabalar el numero quelleredo Migl. Lucero ochocientas varas y diez mas como dho. yevo. Lauriano ochocientas varas con mas diez que le acabalaba la cantidad los quales re repartieron en la conformidad por iguales partes y concluidos todos los bienes diferon todos los erederos que quedaban contentos pagados y satisfechos y no firmaron por no saber firmarlo yo dho. the. de alcalde mayor con los testigos de asistensia actuando como jues resetor a falta de escribano publico real que no no lo hai en este reino de doi fee en este dia mes y ano.

MIGUEL THENORIO DE ALBA. [RUBRIC.]

MIGUEL GALLEGO. [RUBRIC.]
DIEGO ARAGON. [RUBRIC.]

TERRITORIO DE NUEVA MEXICO, }
Condado de Bernalillo. }

Esta es para certificar que el antecedente instrumento de escritura es una copia fiel y verdaderamente sacada del original cuyo original es el testamento y ultima voluntad de Francisca
180 Jaramillo *Jaramillo* y cual actualmente existe en poder de Jose Juan Lucero desendiente de Miguel Lucero. Dicho instrumento habiendo sido seria y cuidadosamente examinado y comparado con el original por mi y dos testigos mas cuyos testigos de encontraron suscritos al pie de este certificado, hallamos que esta igual en sustancia y sin haber ninguna omision u adicion con el dicho original.

En testimonio de lof cual pongo a este mi puno oficial hoy 19 de Febrero, A. D. 1881.

FELIPE SANDOVAL,
Juez de Paz.

Testigos:
BENJAMIN M. READ.
ROMAN BACA.

(Endorsed:) Testamento y Ultima Voluntad de Francesca Jaramillo, copiado fielmente del original, Febrero 19, 1881. Co-y (official) of will of Francisca Jaramillo (widow of Antonio Lucero), dated Jan'y 24, 1855. The original is in the possesssion of Felipe Sandoval, of Pena Blanca, N. *M.*

181 PLAINTIFFS' EXHIBIT 4 AND 8.

Translation.

In the name of God our Lord, amen: know all who may see this letter of my testament and last and extreme will that I Francisca Jaramillo resident of this Kingdom of New Mexico, legitimate daughter of Cristobal Jaramillo and of Casilda —— both deceased, being sick a- old with the desease which God our Lord has seen fit to send to me, and being in my full mind, will and understanding, believing as I do in the mistery of the most holy Trinity, Father, Son & Holy Ghost,—three distinct persons and one only true God, and in all things else that our Holy Mother the Catholic apostolic & Roman church professes and believes, choosing for my advocate the blessed Ever-virgin Mary, the holy apostol-s St. Peter and St. Paul, our Lord Saint Francis, the saint of my name that they may pray to God for my soul, fearing that I am going to die, as is natural wishing to place my soul in the way of salvation, I ordain my testament in the form and manner following:

Firstly I recommend my soul to God who created it and redeemed it with his precious blood, and my body to the earth from which it was formed:

Item. I declare that I was married, and kept the vigil according to the order of our Holy Mother the church, with Antonio Lucero and during the time of our married life we had procreated six male children and one female, viz., Antonio, Cristobal, Maria, Ignacio, Martin, Miguel, Lauriano, I declare them to be my lawful children.

Item. I declare that when I contracted said marriage my father settled on me a piece of land ten cows and one hundred head of minor stock, and the said my husband brought with him nothing except his weapons and horses for he was a soldier.

Item. I declare that it is my will, if it shall please God to take me from this life that my body be shrouded in the habit of my father Saint Francis, and interred in the church of this pueblo of our father Saint Bonadventure of Cochiti, and that if it should or not be competent mass with my body present shall be ordered to be said and that two novenas shall be said for my sake and the rest I leave to the discretion of my heirs.

Item. I declare that in my residence I set apart one room for my son Ignacio—and the rest shall be divided equally among the other heirs.

182 Item. I declare that I leave a tract of land at the canada of Cochiti which my husband had as a grant, that its boundaries will appear from the grant excepting one portion that has been sold among various parties who are the following, to wit: Juan Pedro Archuleta, Diego (2) Gallego, Tomas Gallego, Josefa Gutienez, Diego Gallego, and these all appear from their deeds except that of Diego Gallego, which is known to my heirs.

Item. I declare that I and my son-in-law jointly purchased a piece of land from Felipe Silva, and we gave him $200, one hundred apiece for the same, and the same shall have to be partitioned by equal parts.

Item. I declare that I owe $15 to Felipe Silva.

Item. I declare that I owe one ox to Joseph Sanches.

Item. I declare that I owe Juan Vigil a pair of stockings.

Item. I declare that Manuel Gallego owes me one cloth.

Item. I declare that I have given to my daughter Marie Lucero 31 head of minor stock and one colt.

Item. I declare that I have given to my son Ignacio 25 head of minor stock.

Item. I declare that I have given to my son Antonio 25 head of minor stock.

Item. I declare that I have in Albuquerque a piece of land which my husband obtained by royal purchase from my deceased father, as it appears from the deed, and also one piece of land that was settled on him by my said father.

Item. I declare that I leave 193 ewes.

Item. I declare that I leave 4 oxen.

Item. I declare an ax which I leave to my son Lauriano.

Item. I declare a cart.

Item. I declare a cow which I leave to my son Antonio—and the calf I leave to my son Lauriano.

Item. I declare that four horses that my son Martin I know to be his for he has acquired them by his exertions.

Item. I declare that I grant and donate to Diego Aragon one-half of a piece of land which my husband had given to him with its house lot, and this shall be in order that he may enjoy it without prejudice to my sons, and that if at any time he shall endeavor to sell it, it shall b- to my heirs.

183 Item. I declare that I leave to Rosa my Indian girl because she rendered service to me, a piece of one hundred varas of land laid out in a square and one house lot and some goats which *is* known to my sons to be hers, which she will select, and that is my will.

Item. I declare a rebosa cloth for my son Miguel.

Item. I declare that I leave to my son Martin a pair of serge skirts.

And when all my funeral expenses and necessary charges have

been paid my heirs shall divide among themselves in equal portions.

So that with God's blessing and mine they may enjoy it, and to give effect to this my testament I appoint Joseph Jaramillo in the first place and Martin Gallego in the second place and Cristobal Lucero in the third place as my executors in order that they may execute my last will, and I ask them to divide in equal portions among my said heirs, those named being the lawful ones, and I revoke and annul all other testaments, memorandums, codicils, whatever I may have made before this one, and that this alone shall be valid, and for its stability and validity I asked the senor alcalde mayor Bartolome Fernandez de la Pedrera to interpose his authority.

And I, the said alcalde mayor, being present at its execution, certify that I know the grantor, who is in her full mind, and I interpose and did interpose my authority and judicial decree, as far as I can and am able to do, and she did not sign because she did not know how. I signed it with my attending witnesses, with whom I act as judge commissioner, for there is no royal or public notary in this kingdom, and upon this paper, there being none of the seal, to which I certify.

BARTOLOME FERNANDEZ DE LA PEDRERA. [R.]

MANUEL THENORIO DE ALBA. [R.]
MIGUEL THENORIO DE ALBE Y CORONA. [R.]

184 At this place and locality of the Canada de Cochiti on the 24th day of January, 1755, before me Miguel Thenorio de Alba actual lieutenant of this said jurisdiction, appeared Joseph Jaramillo, Martin Gallego, and Cristobal Lucero as executors of the late Francisca Jaramillo widow of Antonio Lucero, and say: That since the deceased has ordained her testament they presented the same to me so that by me and before me the proper effect might be given to the said bequests, by dividing the property mentioned in the said testament, which property remained for the benefit of her heirs, and finding and believing what is asked of me to be just, I should and did command the said executors to bring all the property mentioned in the said testament on the 24th day of this present month of January, in order to proceed to the making of the partition among the heirs of the said deceased, thus I determined, ordered and signed as judge commissioner, with witnesses of my attendance for the lack of public or royal notary in this kingdom, to which I certify on the said day month and year.

MIGUEL THENORIO DE ALBA. [R.]

DIEGO ARAGON. [R.]

And the partition of the movable property having been made among the heirs of the said deceased, $72 in ewes fell to the lot of Antonio Lucero; and to Cristobal $70 in ewes and $12 were com-

Item. I declare that in my residence I set apart one room for my son Ignacio—and the rest shall be divided equally among the other heirs.

182 Item. I declare that I leave a tract of land at the canada of Cochiti which my husband had as a grant, that its boundaries will appear from the grant excepting one portion that has been sold among various parties who are the following, to wit: Juan Pedro Archuleta, Diego (2) Gallego, Tomas Gallego, Josefa Gutienez, Diego Gallego, and these all appear from their deeds except that of Diego Gallego, which is known to my heirs.

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Item. I declare that four horses that my son Martin I know to be his for he has acquired them by his exertions.

Item. I declare that I grant and donate to Diego Aragon one-half of a piece of land which my husband had given to him with its house lot, and this shall be in order that he may enjoy it without prejudice to my sons, and that if at any time he shall endeavor to sell it, it shall b- to my heirs.

183 Item. I declare that I leave to Rosa my Indian girl because she rendered service to me, a piece of one hundred varas of land laid out in a square and one house lot and some goats which *is* known to my sons to be hers, which she will select, and that is my will.

Item. I declare a rebosa cloth for my son Miguel.

Item. I declare that I leave to my son Martin a pair of serge skirts.

And when all my funeral expenses and necessary charges have

been paid my heirs shall divide among themselves in equal portions.

So that with God's blessing and mine they may enjoy it, and to give effect to this my testament I appoint Joseph Jaramillo in the first place and Martin Gallego in the second place and Cristobal Lucero in the third place as my executors in order that they may execute my last will, and I ask them to divide in equal portions among my said heirs, those named being the lawful ones, and I revoke and annul all other testaments, memorandums, codicils, whatever I may have made before this one, and that this alone shall be valid, and for its stability and validity I asked the senor alcalde mayor Bartolome Fernandez de la Pedrera to interpose his authority.

And I, the said alcalde mayor, being present at its execution, certify that I know the grantor, who is in her full mind, and I interpose and did interpose my authority and judicial decree, as far as I can and am able to do, and she did not sign because she did not know how. I signed it with my attending witnesses, with whom I act as judge commissioner, for there is no royal or public notary in this kingdom, and upon this paper, there being none of the seal, to which I certify.

BARTOLOME FERNANDEZ DE LA PEDRERA. [R.]

MANUEL THENORIO DE ALBA. [R.]
MIGUEL THENORIO DE ALBE Y CORONA. [R.]

184 At this place and locality of the Canada de Cochiti on the 24th day of January, 1755, before me Miguel Thenorio de Alba actual lieutenant of this said jurisdiction, appeared Joseph Jaramillo, Martin Gallego, and Cristobal Lucero as executors of the late Francisca Jaramillo widow of Antonio Lucero, and say: That since the deceased has ordained her testament they presented the same to me so that by me and before me the proper effect might be given to the said bequests, by dividing the property mentioned in the said testament, which property remained for the benefit of her heirs, and finding and believing what is asked of me to be just, I should and did command the said executors to bring all the property mentioned in the said testament on the 24th day of this present month of January, in order to proceed to the making of the partition among the heirs of the said deceased, thus I determined, ordered and signed as judge commissioner, with witnesses of my attendance for the lack of public or royal notary in this kingdom, to which I certify on the said day month and year.

MIGUEL THENORIO DE ALBA. [R.]

DIEGO ARAGON. [R.]

And the partition of the movable property having been made among the heirs of the said deceased, $72 in ewes fell to the lot of Antonio Lucero; and to Cristobal $70 in ewes and $12 were com-

pleted to him in land which I will specify later on; to Marie Lucero $72 in ewes; to Ignacio Lucero $57 and his amount was completed in lands; to Martin Lucero $59 and his amount was completed in lands; to Miguel $56 and his amount was completed in lands; $72 to those that had been married before, which amount had already been delivered to them. And this being accomplished I proceeded to the farming lands, and being upon them I measured the said lands with a Castillian vara and they had from east to west *and they had from east to west they had,* 5,222 varas, of which Antonio Lucero received 800 varas; Cristobal 800 and 10 more to complete the sum of $12, for the first ones had received $12 by having that amount settled upon them, Marie Lucero 800 varas and 200 more which her brothers had granted and donated to her for the reason that her lands were adjoining to the lands had by royal purchase by the deceased and Martin Gallego, which had not been partitioned until now that I the said lieutenant alcalde mayor and the executor Joseph Jaramillo partitioned them; Ignatio received 800
185 varas plus 10 more to complete the amount stated above; Miguel Lucero 800 varas and 10 more for the reason above stated, Lauriano 800 varas plus ten more to complete the amount stated; which were divided accordingly in equal portions. And the partition of the property being concluded, all the heirs said that they were satisfied, paid and contented, and they did not sign because they did not know how, and I the said lieutenant alcalde mayor signed it with the witnesses of my attendance for the lack of public or royal notary there being none in this kingdom to which I certify on the said day month and year.

MIGUEL THENORIO DE ALBA. [R.]

MANUEL GALLEGO. [R.]
DIEGO ARAGON. [R.]

186 PLAINTIFFS' EXHIBIT 4*a*.

Spanish.

Copia.

En este Puesto de Ntra Sra de Guadalupe de la Canada de Cochiti en el dia veinta de Diciembre de 1833 anos, ante mi el Ciudadano Francisco Alvino Aragon Alcalde constitucional de dicha Jurisdicion, parecieron precentes Franço Xavier Lucero y Pablo Aragon, A quienes doy fee conosco; y dijo el primero que daba y dia en venta nacional a dico aragon vesino de dicha Canada de Cochiti; un pedaso de tierra de lavor, que se haya en dicha canada da que hubo dicho Xavier Lucero por erencia de sufinado padre: Martin Lucero la cual dicha tierra se compone de cuarenta varas cuyos linderos son por el ariente contierras del mismo comprador, por el poniente linda con tierras de Juan Ortega y por el Norte y sur hasta onde resa la merced real de dicha canada y dichas quarenta varas de tierra las vendio el mencionado Xavier Lucero por el

precio y cantidad de quarenta y cuatro pesos al corriente de la tierra de cuya cantidad se dio por contento pagado satisfecho dicho vendedor y que si anas bale dicha tierra o valer pueda de la demacia le hace gracia y donacion de ella a dicho aragon pura mera perfecta e inrrevocable que el derecho llama inter vivos sobre que renuncia las leyes de la numerara pecunia prueba y paga las de duo obus resdevendi i antentica perfide y suribus las leyes de la man comunidad que hablan sobre la mitad del Justo precio que se los da libres de senso tributo y poteca para que los goze con libre franco y general administracion y que pueda venderla cambrarla y enagenarla en las personas que mas bien visto le sea y le cede y traspasa a dicho aragon la propiedad drecho accion y senorio que a dichas tierras tiene sobre que no le pondra pleito ni demanda alguna ni el ni sus hijos erederos y succesores y que si acaso se la pusieron que no sean oydor en juicio ni fuera del y que saldra a la defensa hasta dejarlo en quieta y pacifica pocecion y da poder a las justicias
de la nacion y en particular a las de esta jurisdicion pora que
187 con todo rigor de derecho de compelen al cumplimento de esta escritura como si fuera par sentencia defintiva de Juez competente pasada en cosa Jusgada consentida y no apelada pora cuyo sanamuento obliga su persona y bienes habidos y por haber y que renuncia tambien la ley antigua su propio fuero domicilo y vicindad la ley Simun beneril u todos las demas de su favor y defensa todo lo qual otorgo ante mi y testigos de mi asistencia que interpuse mi antoridad y decreto judicial y para que conste lo firmo atuando como alcalde constitucional por falta de escribano publico que de ninguna clase lo hay no firmaron los otorgantes porque dijeron no saber firmar firmelo yo con los de mi asistencia en dicho puesto dia mes ano que de todo doy fee.

FRANCISCO ALVINO ARAGON, *Alcalde.*
JOSE ESTEVAN ARAGON, *Secretario.*

HERMENEGILDO ANTONIO LUCERO,
MANUEL GONZALES,
Testigos.

188 PLAINTIFFS' EXHIBIT 4*a*.

Translation.

In this place of our Lady of Guadalupe of the Canada of Cochiti on the 20th of December, 1833, personally appeared before me the citizen Franco. Alvino Aragon, alcalde constitutional of said jurisdiction, Franco. Xavier Lucero and Pablo Aragon, both of whom I know and accredit. The first said that he gave and did give in national sale to the said Aragon, resident of said canada of Cochiti, a piece of agricultural land which is in the said canada and which said Xavier Lucero received as a share of the inheritance from his late father, Martin Lucero, and said *al*nd is composed of forty varas whose boundaries are on the east with *with* lands of Juan Ortega and on the north and south as far as the royal grant of said canada

extends, and the aforesaid Xavier Lucero sold the said forty varas of land for the price and sum of forty-four dollars, current money of the land, with which sum the said vendor declared himself to be pleased, paid and satisfied, and that if said land is worth more or may be worth more, of the excess in value he makes grant and gift to said Aragon, pure, simple, perfect and irrevocable, denominated by the law inter vivos, whereupon he renounces the laws of the non numerata pecunia, proof and payment, those of the duobus resdevendit yaute tica perfide y lusoribus, the laws of the man, comunidad, which treat about the half of the just price, and that he gives them free of taxes and assessments and mortgages, that he may enjoy them with freedom and general control and that he may sell, exchange and transfer to persons he may desire, and he cedes and transfers to said Aragon the property, right, claim and ownership which he has in said lands whereupon he will not dispute nor claim it, neither himself nor his children, heirs and successors, and if they should dispute it that they may not be heard in court nor out of it, and that he will protect him until he is left in a quiet and peaceable possession, and gives power to the national courts particularly to those of this jurisdiction that with all the rigor of the law he may be compelled to the fulfilment of this conveyance, as if it was by a definitive sentence passed by a competent judge, as a thing passed upon, acquiesced in and not appealed, for whose guarantee he binds his person and any goods he has or may have, and that he also renounces the old law circumbenerit and all the others that go in his favor or defense. All of which he granted before me and the witnesses of my assistance. I exercised my authority and judicial power, and that this may be valid I sign it acting as a constitutional alcalde in the absence of a notary public of which there is none. The grantors did not sign it because they said that they could not sign. I signed it with those of my assistance in said place*m* day month and year all of which I certify.

FRANCISCO ALBINO ARAGON, *Alcalde.* [RUBRIC.]
J. ESTEVAN ARAGON, *Sc'y.*

Witnesses:
HERMENEJILDO ANTONIO LUCERO.
MANUEL GALLEGOS.

Witness.

189 PLAINTIFFS' EXHIBIT 4*b*.

Spanish.

Copia.

PENA BLANCA, *Febrero* 1 *de* 1854.

En este mismo puesto de la Sma. Trenidad de la Pena Blanca condado de Santa Ana ante mi Francisco Tomas Cabesa de Baca Jues de Pruebas del mismo comparecieron presentes Jose Francisco Salas vecino de la agua fria condado de Santa Fee y Jose Juan

Lucero de la canada de Cochiti, a quienes conosco y doy fee y dijo el dicho Salas que por cuanto traia poder de todos sus hermanos para vender y traspasar los dos documentos o escritura con todo lo que en ellos se espresa por lo mismo dijo que bendia y con efecto vendio al espresado Lucero las tierras y casa que dicho Salas y sus hermanos tienen en la Canada de Cochiti siendo las mismas varas y linderos que en tales se espresa sin haber ninguna variacion ni dicuento alguno y que todo en comun bendio por el precio y cantidad de cuarenta y cuatro pesos cino reales en dinero con lo que se dio por contento y satisfecho y que si mas bale o baler pueda de la demacia le hace gracia y donacion pura mera perfecta a irrevocable que la ley llama inter vivos, y que se las vendio a su comprador con todos los requisito que presciban las leyes sin que pora ello le pongan pleito ni embaraso, por si ni por los demas sus hermanos mugeres e hijos erederos y susesores y que si alguno o algunas personas se lo pusieren no sean oidos en juicio ni fuera del y su comprador pueda cambiarlas venderlas o enagenarlas o de culquera otra manera hacer el uso que le paresca mejor y gozarla por si sus hijos erederos y subsesores y al saneamiento de este traspaso dijo el vendedor, que por si y a nombre de sus hermanos obligaba sus bienes muebles presentes y futuros y que al cumplimento de este traspaso lo asia con todas casformalidades en que ambas escrituras hablan para que las mismas lo apremien y castiguen y pora constancia y con todo lo estipulado traspasaba y en efecto traspaso en favor de Don. Jose Juan Lucero los espresados
190 documentos por haberle comprado todo el poder derecho y senorio, que yo y los demas mis hermanos teniamos en tales y en todo lo que en ellos consta, y lo firmo por si y por sus yo citados hermanos que lo nominaran abajo conmigo el sor Jues de pruebas en este presente dias mes y ano de que doy fee.

GERONIMO SALAS,
VALENTIA SALAS,
MIGUEL SALAS,
MARIANO SALAS,
SEFERINO SALAS,
MARCOS SALAS,
TEODORO SALAS.
FRANCISCO TOMAS CABESA DE BACA,
Jues de Pruebas.
JOSE FRANCISCO SALAS,
Por si y por sus Hermanos.
BEGNINO RIBERA,
Escrivano de la Corte de Pruebas.

Dror. 12–8, Juro.

191 PLAINTIFFS' EXHIBIT 4*b*.

Translation.

PENA BLANCA, *February* 1, 1854.

In this same place of the Santisima Trinidad of the Pena Blanca, county of Santa Ana, before me Francisco Tomas Cabesa de Baca,

county judge of said county, personally appeared Jose Francisco Salas, resident of Agua Fria, county of Santa Fé and Jose Juan Lucero, of the canada of Cochiti, both of whom I know and accredit, and said Salas said that he brought power from all his brothers to sell and transfer the two documents or conveyances, with all that which in them is stated, therefore he said that he was selling and in fact sold to the aforesaid Lucero the lands and house which said Salas and his brothers have in the Canada de Cochiti, being the same varas and boundaries, which in such are mentioned, without any variation nor deduction, and that all in common he sold for the price and sum of forty-four dollars and five reales, in money, with which he was pleased and satisfied, and if they are worth more or may be worth more, of the excess in value he makes grant and gift, pure, simple, perfect and irrevocable, denominated inter vivos and that he sold them to the purchaser under all the requirements prescribed by the laws, that they may not dispute it nor obstruct it, neither by himself nor his brothers nor their wives *jor* children, heirs nor successors, and if any person or persons should dispute it, that they may not be heard in court nor out of it, and the *pru*chaser may exchange, sell or -ransfer it or make any other use of it he may think best, and enjoy them himself, his children, heirs and successors, and to the guarantee of this transfer, the vender said that for himself and in the name of his brothers he bound their personal property, that which they have or may have, and for the fulfilment of this he acted with all the formalities which both conveyances demand, that by the same he may be forced and punished, and for the permanency of all the stipulations, he transfers and in fact transferred in favor of Don Jose Juan Lucero, the said documents, by having brought all the power, right or dominion which I and my brothers had in such and all which in them appears, and he signed it for himself and his aforementioned brothers, which will be named below, with me the county judge in said place, day month and year, which I certify.

GERONIMO SALAS,
VALENTIN SALAS,
MIGUEL SALAS,
MARIANO SALAS,
SEFERINO *SEFERINO* SALAS,
MARCOS SALAS,
TEODORO SALAS.
FRANCISCO TOMAS CABESA DE BACA,
County Judge.

JOSE FRANCISCO SALAS,
Vender for Himself and Brothers.

BENIGNO RIBERA,
County Clerk.

192 PLAINTIFFS' EXHIBIT 5*a*.

Spanish.

En este Puesta de Senora de Guadalupe de la Canada de Cochiti en el dia veinte y siete del mes de Abril de mil ochocientos veinte y nueve anos ante me el ciudadano Miguel Baca Alcalde costitusional de dicha jurisdicion parecieron presente Miguel Hurtado y Pablo Aragon a quienes doy fee conosco y dixo el primero quedaba y dio en venta nacional a dicho aragon vecino de dicha canada de Cochiti un pedaso de tierra de labor que se haya en dicha canada la que hubo dicho Hurtado de erencia de su esposa Maria Franca Lucero le cual dicha tierra se compone de quarenta varas, y mas catorce varas y media que bendio Meregildo Lucero al espresado aragon que tambien parecio al hacer esta escritura en mi presencia y dichas tierras mas y otras se componen de cincuenta y cuatro varas y media cullos linderos son por el oriente contierras de los ermanos del propio vendedos por el norte entradas y salidas libres hasta onde resa la merce de dicha canada por el sur; entradas y salidas libres hasta onde resa dicha merced por el Poinente con tierras de Xabier Lucero Hermano de dicha eredera y dichas tierras las cuarenta varas las bendio al mensionado Hurtado por el precio y cantidad de cuarenta y cuatro pesos al corriente de la tierra y las catorce varas las vendio al referido Miguel Lucero por el precio de catorce quatro reales al mismo corriente de la tierra de cuyas cantidades se dieron pos contentos pagados y satisfechos dichos vendedores y que si mas valen dichas tierras o baler puedan de la demasia le hacen gracia y donacion de ellas a dicho aragon pura mera perfect irrebocable que el decreto llama inter vivos sobre que renuncia las leyes de la numerara Pequnia prueba y paga las de Duobus Resdevendi y antentica perfide suribus de laman comunidad que hablan sobre la mita del justo precio y que se las dan libres de senso tributo y poteca para que las gose con libre franco y general administracion y que pueda
193 venderlas cambearlas y enagenerlas en las personas que mas vien visto le sea y le ceden y traspasan al dicho aragon le propiedad derecho asion y senorio que en dicha tierra tenian sobre que no le pondran pleito ni demanda alguna ni ellos ni sus hijos erederos y sus susesores y que si acaso le pusieren que no sean traidor en juicio ni fuera de el y que saldran a su defensa hasta dejarlo quieta y pasifica posesion y dan poder a las justicias de la nacion y en particular a las de esta jurisdicion para que con todo rigor de decreto les compelen al cumplimento de esta ecoritura como si fuera por sentencia difintiva de juez competente pasado en cosa jusgada consentida y no apelada para cuyo sanamiento obligaron sus personas y bienes habidos y por haber y que renuncian tambien la ley antigua su propio jueso domisilio y veciudad la lei sircumbenciones y todas las demas de su favor todo le qual otorgan ante ni y tistigos de asistensia que interpuse mi autorida y decreto y para que coste lo firme autuando como alcalde constitusional por

falta de escribano publico que de ninguna clase lo hay y le firmaron conmigo los de otrorgantes y por no saber firmas con esta senal de crus de que yo doy fee.

JOSE MIGUEL BACA.

MIGUEL HURTADO x.
MEREGILDO LUCERO x.

Asistensia:
SEBASTIAN SALAZAR.
Asistencia:
ALBINO ARAGON.

194 PLAINTIFFS' EXHIBIT *5a*.

Translation.

In this place of our Lady of Guadalupe of the canada of Cochiti, in the 27th day of April, 1829, before me the citizen Miguel Baca, constitutional alcalde of said jurisdiction personally appeared Miguel Hurtado a/d Pablo Aragon, both of whom I know and accredit, and the first said that he gave and did give in national sale to said Aragon, resident of said canada of Cochiti, a piece of agricultural land which is found in said canada of Cochiti, which said Hurtado had as an inheritance from his wife Maria Francisca Lucero: the said land is composed of *of*rty varas and fourteen and a half other varas that Merejildo Lucero sold to the said Aragon, who also appeared in my presence at the time of the execution of this conveyance and said tracts of land are composed of fifty-four and a half varas whose boundaries are: On the east, lands of the brothers of the grantor; on the north, free entrances and outlets as far as the royal grant said canada extends; on the south free entrances and outlets as far as said grant extends; on the west, lands of Habier Lucero, brother of said heiress, and said lands, the forty varas, he sold them to the aforesaid Hurtado for the price and sum of fo-ty-four dollars, current money of the land; and the fourteen and a half varas he sold them to the aforesaid Miguel Lucero for the price and sum of $14.50, likewise in current money of the land, with which said sums said grantors acknowledged themselves to be pleased, paid and sa/tisfied, and that if said lands are worth more or may be worth more they make grant and gift of the excess in value to the said Aragon, pure, simple, perfect, irrevocable, as designated by the law inter vivos. Whereupon *the* renounces the laws of numerara pecunia, proof and payment, those of duobus resdevendi and autentica perfide zuribus delaman comunidad, that speak about the half of the lawful price and that they give them to him free of taxes, contribution and mortgage, that he may enjoy them with free and general control, that he may sell, exchange and transfer them to such persons as he may see fit, and that they cede and transfer to the said Aragon the property, right and privilege which they had in said lands, and that they will not dispute nor bring claim against it, neither they nor their sons, heirs and successors,

and if they should dispute it may they not be heard on court nor out of it, and they will defend him until he is left in a quiet and peaceaboe possession, and they give power to the courts of the nation and particularly to those of this jurisdiction that they may with all the rigor of the law compel them to comply with this conveyance, as if it were by a definitive sentence passed by a competent judge, as a thing passed upon, acquiesced in and not appealed and they bind themselves and any property they have or may have and they renounce also the old law, his homestead and vicinity, the law circumvencionis and all the rest in his favor all of which they agree before me and witnesses of my assistance that I interpose my authority and decree and that this may be valid I sign it acting as a constitutional alcalde, there not being a notary public of any kind and with me the vendors signed and being unable to sign they signed with a cross, which I accredit.

JOSE MIGUEL BACA.

MIGUEL HURTADO x.
MEREJILDO LUCERO x.

Assistencia:
ALBINO ARAGON.
Asistencia:
SEBASTIAN SALAZAR.

195 PLAINTIFFS' EXHIBIT 5.

(Endorsed.)

Proceedings pending and not decided in the matter of the appeal made by the alcalde mayor Don Bartolome Fernandez in favor of the republic of the Indians of the pueblo of Cochiti against some residents called Romero who claimed to settle the place called El Capulin. Concluded this year of 1768.

To the governor and captain general:

Bartolome Fernandez, alcalde mayor of the pueblos of the Queres nation, I bring to the notice of Your Excellency as I have been informed, that at the place commonly called El Capulin contiguous to the pueblo of Cochiti, one of those under my charge, on the north side, some residents called the Romeros are settling, and in view of the fact that during all the time which I have lived in this kingdom I have never seen the said tract settled, which is the pasture land of the horses and large stock of the said pueblo and of other residents of this kingdom, and I not knowing of any grant having been given to authorize such settlement I inform Your Excellency of the foregoing in order that being informed Your Excellency may decide as may be deemed proper.

BARTOLOME FERNANDEZ. [RUBRIC.]

CITY OF SANTA FÉ, *April* 11, 1765.

Having examined the question made by the alcalde mayor of the pueblos of Santo Domingo Don Bartolome Fernandez, I commission

him to proceed to the place called El Capulin and eject from said place the individuals making in it the settlement referred to not consenting to it — any manner; and if they have any share and right to present in the said place of El Capulin let them do so before this court of my government. And thus I provided, ordered and signed, Don Thomas Velez Cachupin, governor and cap-
196 tain general of this kingdom, and having heard it he said that he obeyed it, but that he had that which he desired to present, and in order that it may so appear I made it a part of the proceedings which I signed.

BARTOLOME FERNANDEZ. [RUBRIC.]

To the governor and captain general:

Miguel Romero, resident of this city of Santa Fé, of the place of the Cieneguilla, I appear before the greatness of Your Excellency asking that I be allowed all the privileges permitted by law and I say, sir, that with regard to having been notified by the alcalde mayor Don Bartolome Fernandez by Your Excellency's order to vacate the Capulin and having seen that which was ordered by Your Excellency I obeyed it immediately, but I did not remove any of my property because this is what I hold and have held for five years and six months and in accordance with this I have settled it without any objection until this year when it has been known that I have purchased the parts which did not belong to me by law which are six and for which I have satisfied the owners of the same, I and my brother Domingo Romero as will appear by (the testimony of) the owners themselves who sold it to me and better by the royal grant and the testament with the clause which our grandfather Andres Montoya left which said instruments I present with due formality to Your Excellency in order that in view of the same Your Excellency may decide as may be deemed fit, since I do not find any reason or cause for my being interfered with or deprived of the said purchase as there is no reason for it since prior to this some of those in opposition had opportunity to have
197 purchased and they only waited for this occasion to prejudice me as Your Excellency will know and see, which will aid me, for if I am deprived of this right I will be ruined as I was before, having been left by the enemy on foot and helpless until I availed myself of the said rancho, and so I ask and pray of the greatness of Your Excellency the grant of the sale of the said rancho.

Of Your Excellency I ask and pray very humbly that you will be pleased to do as I have petitioned, and if it is granted to me I will receive grace and I swear in due form that this my petition is not in bad faith, and in that which is necessary, etc.

MIGUEL ROMERO. [RUBRIC.]

CITY OF SANTA FÉ, *April* 18, 1765.

In view of that which this party sets forth, the grant and the will which he accompanies; and in view of the question made by the alcalde mayor of the pueblos of Cochiti, Don Bartolome Fer-

nandez; and of the suspicion which attaches to the grant which he presents, I ought to order and I do order that that which was ordered by me on the question by the alcalde mayor be carried into full and due effect and that these parties be again notified that in no manner shall they make settlement either by building or cultivation at the said place of Capulin nor on all of the land asked for in the grant under penalty of fifty dollars fine to be at once applied to the building of the prison and repairing of these houses of the King; they being permitted only to have their stock on the said place of the Capulin as Crown land as the other residents do, but without prejudice to the pueblos and republics of the Indians of Cochiti and San Ildefonso, which the alcalde mayor of this city, will notify to them, Don Francisco Guerrero, and in order to verify the contradictions and illegality which there may be in the issuance of
198 this old grant which they present as well as the nullities which are observed in it, let exhibition be made of the whole, including the certified copy of the will which they present it being made a part of the record, to the said republics of Cochiti and San Ildefonso, and to all the adjoining residents of the said place of Capulin and also to the officers of the *calvary* company of this royal garrison to ascertain whether they are or are not or may be pastures for their horses. And by the present thus I provided and signed Don Thomas Velez Cachupin, governor and captain general of this kingdom acting with two assisting witnesses in the absence of notaries of which there is none in this government.

VELEZ CACHUPIN. [RUBRIC.]

Witness:

CARLOS FERNANDEZ. [RUBRIC.]

Witness:

JOSEPH MALDONADO. [RUBRIC.]

Immediately thereafter and on the said day I, the said alcalde mayor, in fulfilment and obedience to that which was ordered by the governor and captain general of this kingdom, Don Thomas Velez Cachupin, Miguel Romero and his brother Domingo Romero residents of the place of the Cieneguilla being present, in person, I notified them of what had been provided and ordered by the said governor in the preceding decree and they having been informed of the contents thereof, they answered and said, that they had understood and heard that which His Excellency ordered and that they humbly obeyed but that they had that which they desired to present to His Excellency in regard to the points upon which they had been notified in order that upon examining them His Excellency might be pleased to *l*ok upon them and do them justice, and this they gave for their answer, and Miguel Romero signed with me and the witnesses, acting as aforesaid and Domingo did not sign because he said he did not know how, to which I certify.

199 FRANCISCO GUERRERO. [RUBRIC.]

MIG-EL ROMERO. [RUBRIC.]

JUAN FRANCISCO NINO LADRON DE GUEVARA. [RUBRIC.]

FRANCISCO XABIER FRAGOSO. [RUBRIC.]

I, the lieutenant of this royal garrison Don Tomas Madri and the ensign Don Francisco Esquibel having examined and understood that which was ordered by the governor and captain general of this kingdom, Don Tomas Velez Cachupin according to the request of the said parties, the Romeros, we say that having informed ourselves of the grant and the boundaries which the said grant recite we find that it does not include the pastures of the horses of this royal garrison because Pajarito is outside of the boundaries of the Romeros and the watering place of the Caja del Rio is also outside and because it is true and in obedience to that which is ordered by His Excellency we have given our answer and we sign it on this day October 1, of the present year 1766.

FRANCISCO ESQUIBEL. [RUBRIC.]

TOMAS MADRID. [RUBRIC.]

To the governor and captain general:

Andres Montoya resident and dweller of this kingdom and one of the conquerors of the same, before the greatness of Your Excellency, I appear asking that all the privileges allowed by law be given me and I say, sir, that I make register of a tract which is between the orchards (or gardens) of Cochiti and San Ildefonso on the other side of the Rio del Norte, and the said tract is bounded on the north by the said orchards of San Ildefonso and on the south by those of Cochiti, being distant from each place of the said orchards more than a league, and it is also bounded on the east by the Rio del Norte and on the west by the mountain of Cochiti and because the said place is not to the prejudice of any person and I being poor man and burdened with children, and having
200 served His Majesty, well-known zeal, will Your Excellency be pleased to make me the grant in the name of His Majesty, whom may God preserve, in which I will receive benefit and grace, for all of which:—

I ask and pray that Your Excellency will be pleased to hear me in justice granting my petition in the understanding that His Majesty so directs, as it is just, this I pray for and I swear in due form that this my petition is not in bad faith and in that which is necessary etc.

ANDRES MONTOYA. [RUBRIC.]

In the city of Santa Fé, capital of this Kingdom of New Mexico, on the eighteenth day of the month of August, one thousand seven hundred and thirty-nine, I, Don Gaspar Domingo de Mendoza, governor and captain general of the said kingdom by His Majesty (may God preserve him) having examined this petition I admitted it and in attention to its contents I ought to order and I do order that he be given the grant he asks for in the name of the King our master, in order that he may hold, cultivate and enjoy it for himself, his heirs and successors or whomsoever may have the better right, it being understood that it must be without prejudice to any third person for on the contrary it is not valid, wherefore I order

the alcalde mayor of the jurisdiction to which it belongs, or the person who may be delegated to give the possession may give the same with all the circumstances and requisites proper in such cases, thus I provided, ordered and signed with my assisting witnesses acting as delegate judge on account of the notorious absence of a notary either royal or public of which there is none of the stamped.

DON GASPAR DOMINGO DE MENDOZA. [RUBRIC.]

Witness:
DIEGO DE UGARTE. [RUBRIC.]
Witness:
JOSEPH TERRUS. [RUBRIC.]

201 On the seventh day of the month of October one thousand seven hundred and thirty-nine, I, Captain Antonio Montoya, alcalde mayor and war captain of the city of Santa Fé, in obedience to the decree above provided by Don Gaspar Domingo de Mendoza, governor and captain general of this Kingdom of New Mexico, proceeded to the tract and lands which in said decree I am ordered and in it I gave real possession in the name of His Majesty (whom may God preserve) to Captain Andres Montoya in form of law with the usual ceremonies prescribed by law, taking him by the hand and walking with him over it, he pulled up weeds, threw stones and shouted, and I gave it to him with the same boundaries which he sets out in his petition and the boundaries run thus; on the east the Rio del Norte, on the west the high mountain which runs from Cochiti, on the north one league below the last orchards of the Indians of San Ildefonso, on the south one league above the orchards of the Indians of Cochiti; and on the said boundaries I ordered landmarks to be placed, I having previously examined them; and I signed it with two assisting witnesses acting as delegate judge in the absence of notaries public or royal, there being none in this kingdom.

ANTONIO MONTOYA, [RUBRIC.]
Delegate Judge.

Witness:
JUAN CHABES. [RUBRIC.]
Witness:
ANDRES MONTOYA. [RUBRIC.]

SANTA FÉ, *October* 26, 1739.

This grant is entered in my government book which is deposited in the archives of this capital for the disputes which may arise.

MENDOZA. [RUBRIC.]

202 In the name of God Almighty and of the Ever-virgin Mary conceived without stain of original sin, let it be notorious and manifest unto those who may see the present, that I Captain Andres Montoya legitimate son of Captain Antonio and Dona Maria Hurtado, natives of this Kingdom of New Mexico, resident of the place of

Cieneguilla, being ill in bed and in my full mind and natural understanding which God our Lord has seen fit to give me, believing as I firmly do believe in the mystery of the Most Holy Trinity, Father, Son and Holy Ghost, three distinct persons, and one only true God and in all the other mysteries which our holy Roman Catholic mother church holds, believes, acknowledges and teaches, and receiving as special patroness and advocate the Ever-virgin Mary, my holy guardian angel, the saint of my name, and the other saints of my devotion, in order that they may intercede with my Lord Jesus Christ that he may place my soul in the most secure road to salvation and under which intercession I order this my will in the form and manner following:—

First. I commend my soul to God our Lord who created it and redeemed it with His most precious blood, and my body to the earth of which it was made, and I desire that when God our Lord takes me from this present life that my body be buried in the church of our Father Saint Francis of this city of Santa Fé in the part or place which my executors may determine, and that my body be shrouded in the habit of our Father Saint Francis whose third son I am, although unworthy, and as to whether there shall or shall not be said a mass with the body present I leave it to the will of my said executors, and that the said mass, if it be said shall be with offerings, as they will.

Item. I declare that I was married the first time to An-
203 tonia Lucero de Godoy, and during our marriage we had and procreated as our legitimate children Josepha Montoya, who is married to Joseph de Santiesteban, Manuela Montoya, now deceased, who was married to Joaquin Sanchez, Andres Montoya, to Ana Baca, Isidro Montoya, married to Manuela Silba, Joseph Montoya, married to Juana Quintana Francisco Montoya married to Juana Baca, Antonio Montoya married to Inez Baca, Cristobal Montoya who died engaged to be married, Nicolas Montoya, bachelor, Diego Montoya, bachelor, and in second nuptials I married Martha Sisneros, and during our marriage we have not had a son or daughter, and the children which I had by my first marriage I declare to be my legitimate children.

Item. I declare that I owe in the province of Sonora, to Thomas de Albisu, resident of Xecori, sixty buffalo skins, heavy elk skins and light deer skins, and medium, I order my executors that they be paid out of my property.

Item. I declare that I owe Ignacio Gonzales, resident of San Buenaventura, a little Indian, seven years old, a piece of tapestry and two painted elk skins, all of which I order my executors that it be paid out of my property.

Item. I declare that I owe to a son of Thomas Madrid, resident of San Buenaventura a little Indian girl six years old, which I also ordered to be paid out of my property.

And if my said property should not be sufficient to pay the debts which I have stated, as well as if any forgotten one should appear and be proven, if my property should not be sufficient to pay it, I pray my creditors for the love of God to forgive them.

Item. I declare as my property two tracts of land, one agricultural which is called Cienequilla distant from this city four leagues, in which there may be contained about twenty
204 fanegas of planting land, and the other, on the other side of the Rio del Norte, which I have not put under cultivation because of my illness is between the orchards of the pueblo of San Ildefonso and Cochiti distant from the one and the other orchard, the boundaries of the said tract half a league.

Item. I declare that I have five broken oxen of gee and haw.

Item. I declare that I have two dry milch cows.

Item. I declare that I have a cart equipped, with yokes, chains and lashings.

Item. I declare that I have six horses and a horse mule, broken.

Item. I declare that I have thirty head of small stock, goats and sheep, and some lambs.

Item. I declare that I have a riding saddle of leather of the country, a common *gun*, a sword, a bridle, spurs, shield, saddle, pockets, powder, sacks, boots and a sheath for the gun.

Item. I declare that I have at the said place of the Cienequilla an adobe house consisting of four rooms and a piazza.

Item. I declare that I have two pots which have been in use, an iron griddle, a spit, a pitcher of hammered copper and another for drinking water, an iron card, five new hoes, an old spit, a carpenter's axe, a chisel.

Item. I declare that I have an old chocolate box with its key.

Item. I declare that I have of my wearing apparel an old cloak of eighteen-hundred-thread cloth, a new overcoat of the same cloth lined with blue baise of the country, a trousers pattern of the same cloth without trimmings, a new black everyday hat.

205 Item. I declare that I have a mattress of woolen domestic, and a sheet of the same which I leave to my *soon* Nicolas, which I leave to him over and above his legal inheritance.

Item. I declare as my property a serviceable horse which Captain Miguel de Coca owes me, I order my executors to collect the same.

Item. I declare that of the agricultural lands which I have at the Cieneguilla I have designated to my sons and sons-in-law certain pieces of land which they plant and of which each one knows his own, and to those who are not married I have not designated anything, and I order my executors to la*w* off an equal amount of lands for them as they are of equal value and quality under irrigation ditch, and if they are not of equal value they shall give them more land than the others have in order that they may be equal.

Item. I declare that to my son Francisco because of his having sold a piece of land which I gave him at the time of his marriage and for which he received one hundred dollars, and he not having wherein to plant I gave him another piece of land, which it is my will to give him, it being comprised in the fifth part of my property.

Item. I give to the forced bequests one dollars each which I separate from my property.

Item. And in order to carry out this my will, and that which is

contained in the same, I appoint for my testamentary executors Isidro Montoya, Andres Montoya and Joseph de Santiesteban, my sons and of my two minor children Diego and Nicolas I leave as their guardians and curators Joseph de Santiesteban for Diego and Isidro for Nicolas, in order that they may receive the share coming to them upon coming of age, whom I pray and charge by God
206 our Lord to try to carry out so soon as they possibly can the bequests and legacies in this will, to which there were present at execution General Don Juan Paez Hurtado, lieutenant general of this Kingdom of New Mexico, alcalde mayor of this capital city of Santa Fé and its jurisdiction, to which I prayed that he would interpose his authority and judicial decrees and I the said alcalde mayor said that I interposed it and I did interpose it, and I certify that I know the testator who did not sign it because he did not know how a witness signed it with me at his request, and the assisting witnesses, I acting by delegated authority (juez receptor) because of there being no notary public or royal in the said kingdom and on this ordinary paper because there is none of any stamp in it, and it is made on the seventeenth day of the month of June one thousand seven hundred and forty.

JUAN PAEZ HURTADO,
Juez Receptor.

At the request of—
ANDRES MONTOYA,
JOSEPH MIGUEL DE LA PENA.
Witness-:
GREGORIO GARDUNO.
FRANCISCO ORTIZ.

It agrees with its original which remains in the archives of this government whence I, General Juan Paez Hurtado, alcalde mayor of the said city at the request of the party had it literally copied, it is certain and true corrected and compared and there were present to see it made, corrected and compared, as instrumental witnesses, Don Joseph Terruz, Antonio Duran de Armijo, and Juna Jos*p*eh de Archuleta, residents of the said city, and in order that it may so appear I signed it, acting by delegated authority (juez receptor) in the absence of a notary public or royal of which
207 there are none in this kingdom, and it is made on the eighteenth of the said month of June one thousand seven hundred and forty.

In testimony of truth I set my usual signature and rubric.

JUAN PAEZ HURTADO. [RUBRIC.]

To the governor and captain general:

Don Bartolome Fernandez, alcalde mayor and war captain of the jurisdiction of Cochiti in obedience to that which was ordered by Your Excellency in the decree of April 18, 1765, I say, defending the right of the Republic of Cochiti, that of the Indians as well as of the residents joined to the said pueblo, all of whom have again asked me to do so, and Your Excellency being in the said pueblo

on your general visit that:—the settlement of the place called El Capulin is extremely prejudicial to them because it is the place where they pasture their large stock and horses. And having examined the grant I find that the possession of the same is fraudulent because there does not appear in it the citation of the adjoining landholders which is necessary, because otherwise and the said adjoining landholders being ignorant of it there would not be any one to allege a better right which is provided for and directed in the grant; and it is also necessary that in order that the grantee shall acquire a right to the land granted that he shall settle it according to the royal laws, and failing as he has failed to make this necessary settlement since this was made up to the present time when it was attempted to be made, the heirs of the grantee have not acquired any right, for he never had any, and for the same reason the clause of the will presented has no force,
208 since no one can give legally that which is not his own, and in addition to what has been said it is observed that there is a contradiction in the matter of boundaries, for in the possession it is said that the boundaries on the north and south are distant one league from the orchards of San Ildefonso and Cochiti, and in the will the testator says one half league, from which is inferred either the nullity of the possession or the ignorance of the grantee of what was asked for and of which possession was given, which proves the bad faith of his possession; for all of which in the name of the said Republic I ask and pray that Your Excellency will be pleased to order that the said tract of the Capulin be not settled and that it be left for common use in which I will receive grace with justice.

BARTOLOME FRNZ. [RUBRIC.]

Forward to the alcalde mayor of the jurisdiction of the canada to which the pueblo of San Ildefonso belongs as is ordered in the decree of His Excellency which appears on the third leaf of these proceedings.

BARTOLOME FRNZ. [RUBRIC.]

In this pueblo of San Ildefonso on July 7, 1765, I, Don Manuel Garcia Pareja, alcalde mayor of the jurisdiction of the Villa Nueva de Santa Cruz de la Canada by virtue of the decree issued by Don Tomas Velez Cachupin governor and captain general of this kingdom I caused to appear the Republic, the Indians of the said pueblo and residents and all being present I published to them that which was ordered by His Excellency, which they obeyed, without asking for or alleging anything in regard to the said decree; which I signed on the said day month and year *ut supra*.

MANUEL GARZIA PAREJA. [RUBRIC.]

209 To the governor and captain general:

Miguel Romero, resident of this city of Santa Fé, and of the Cieneguilla, I appear before the grandeur of Your Excellency asking that I be allowed all the privileges permitted by the law and I say, sir, that the grandeur of Your Excellency will be pleased to

give them to me in order that I may make answer with regard to my right so that then as father of the Republic Your Excellency may give to each one that which is his.

Of Your Excellency I ask and pray very humbly to be pleased to do as I have asked and if it be granted to me I will receive grace and I swear in due form that this petition is not in bad faith and in that which is necessary etc.

MIG-EL ROMERO. [RUBRIC.]

SANTA FÉ, *April* 22, 1767.

Let this petition be attached to the proceedings in the matter which I order to be delivered to this party, and they are contained in ten good leaves, in order that he may plead his right in accordance with law, and thus provided, ordered, and signed Don Pedro Fermin de Mendinueta, governor and captain general of this kingdom.

MENDINUETA. [RUBRIC.]

To the governor and captain general:

Miguel Romero and Domingo Romero both brothers, residents of this city of Santa Fé of the place of Cieneguilla appear before the greatness of Your Excellency asking that all the privileges permitted by law be allowed us and we say, sir, that with regard
210 to that which has been set forth by the alcalde mayor Don Bartolome Fernandez there is no prejudice to him in his jurisdiction because from the pueblo of Cochiti to my boundary there is more than three leagues and a half and midway there is a settlement of Spaniards in which there are some forty-odd families which do not prejudice the pueblo in anything, how can two which we are, I and my brother, be of any prejudice, more particularly on rough and bad land such as these are, and as regards San Ildefonso it is not prejudiced in any way because (it is distant) about three leagues and a half, and so the grandeur of Your Excellency will see that when the documents are not valid the natural rights of man are valid, I having kept my property on the said tract for five years and six months, and since I have been deprived of my residence on the said tract I have suffered much damage and we apprehend much more if we are deprived of establishing a stock farm and residence, and we apply to the great dignity of Your Excellency as father of the Republic to decide upon what may be best for our interest in the matter.

Of Your Excellency I ask and pray very humbly to do as I have petitioned and if it be granted to me I will receive grace and I swear in due form that this my petition is not in bad faith and in that which is necessary etc.

MIG-EL ROMERO. [RUBRIC.]

In this city of Santa Fé capital of this Kingdom of New Mexico on April 25, 1767, I Colonel Don Fermin de Mendinueta, knight of the Order of Santiago, governor and captain general of this kingdom: Having examined these proceedings, and in view of the nul-

lity of the grant on leaves 5 and 6 of the same, by the con-
211 vincing reasons set forth and pleaded by the alcalde mayor Don Bartolome Fernandez in defence of the Indians and residents of the pueblo of Cochiti, one of those under his charge, on the tenth leaf, which with evidence prove that the possession given to Andres Montoya lacked the necessary circumstance of citation of the adjoining landholders, and also that the land included in the said grant was not settled within the term provided by law, in view of the fact that the grant and possession were given in the year of 1739, and that the attempted settlement by Miguel Romero was in that of 1765; for all of which and for other things which it was proper to consider, I said: that I declared and did declare the said grant to be of no value, and the non-right (el ningun derecho) which neither Andres Montoya nor his heirs obtained nor have to the tract of the Capulin; and so also that it does not aid the said Romero to have pastured his stock (which is what he calls settling) in acquiring a right to the property, inasmuch as he did so without just title, and he only could have done so in the same way in which it is enjoyed and used by the natives of Cochiti and the adjoining residents as Crown land; in which view I ought to order and I do order, deciding definitely that neither Miguel Romero nor anybody else shall settle nor have ownership in the said tract of the Capulin, and that it shall be held and esteemed as Crown land for the common benefit of all those who may desire to pasture their stock on the same without excluding the said Romero, as was permitted by my predecessor Don Tomas Velez Cachupin in his decree of April 18, 1765, of record in these proceedings, and this my definitive decision shall be notified to the party Miguel Romero with warning not to again render himself liable by presenting petitions in bad faith, and that no appeal will be allowed him in this matter which I signed with my assisting witnesses in the absence of a notary of which there is none in this government of any class to which I certify.

PEDRO FERMIN DE MENDINUETA. [RUBRIC.]

Witness:
MATHEO DE PENARREDONDA. [RUBRIC.]
Witness:
ANTO. MORETO. [RUBRIC.]

On the 18th of February 1768 this party was informed of the foregoing decree.

MENDINUETA. [RUBRIC.]

212 PLAINTIFFS' EXHIBIT No. 5*b*.

Depositions of Felipe Sandoval, Mariano Salas, Jesus Maria Cabeza de Baca, and Juan Lopez.

In the matter of the investigation of the Cañada de Cochiti grant, being file number 95, held at the office of the United States surveyor general this 21st day of July, 1882, there were present, H. W. Atkinson, surveyor general; Ireneo L. Chaves, sworn as special interpreter, and J. G. Whitney, claimant, with E. A. Fiske, his attorney.

FELIPE SANDOVAL, having been first duly sworn, deposeth and saith:

Ques. State your name, age, occupation, and place of residence.

Ans. My name is Felipe Sandoval; age, fifty-four years; am a farmer and justice of the peace at Peña Blanca, and live at Peña Blanca, in Bernalillo county, Territory of New Mexico.

Ques. How long have you resided there?

Ans. Since 1849. During that time I have been absent 8 years.

Ques. Are you acquainted with a grant known as the Cañada de Cochiti? If so, how long have you known it and where is it situated?

Ans. Yes; I am. I have known it since 1866 or 1867; am not positive of the date. It is situated in the Cañada de Cochiti, in Bernalillo county, Territory of New Mexico.

Ques. How do you know of the existance of such a grant?

Ans. Because I brought the original papers to the surveyor general's office as a commissioner for the grantees.

213 Ques. by Fiske. The original grant papers were shown the witness and asked if these were the original grant papers deposited by him with the surveyor general.

Ans. Yes.

Ques. From whom did you obtain the papers?

Ans. I obtained them from the people, I having been appointed a commissioner by the people residing on the grant.

Ques. How long have these papers been in possession of the people who reside on the grant?

Ans. To my knowledge they have had possession of these papers since 1849.

Ques. Are you acquainted with the general reputation among the people residing on this grant or vicinity as to the time these grant papers have been in possession of the grant-owners.

Ans. Yes.

Ques. What is that reputation with reference to the time those papers have been in the possession of the owners?

Ans. The grant is generally understood to be over a century old. From the time it was given they had it in their possession.

Ques. There was a copy of these grant papers made on the 30th of Dec., 1817, certified to by one Antonio Cabeza de Baca. State whether or not that copy was also deposited by you with the surveyor general.

Ans. I don't remember whether I brought said copy or no.

214 Ques. Do you remember what papers you brought to the office of the surveyor general at the time mentioned?

Ans. I do.

Ques. Witness now shown a paper purporting to be a certified copy of the grant, certified by one Antonio Cabeza de Baca, on the 30th day of December, 1817, and he was asked: Is that one of the papers you deposited with the surveyor general at the time and in the manner above mentioned?

Ans. Yes.

Ques. Where did you get that certified copy?

Ans. It was given to me by the people as a commissioner to present it to the surveyor general.

Ques. When did you first see this certified copy?

Ans. I saw the certified copy at the same time I saw the other grant papers in 1849.

Ques. Is there any general reputation among the people residing on the grant or vicinity as to the time this certified copy has been in the possession of the grant-owners?

Ans. Yes.

Ques. What is that general reputation as to the length of time this certified copy has been in the possession of the owners?

Ans. It is generally reputed to be in their possession since it was made.

215 Ques. Did you know one Antonio C. de Baca, who made this copy?

Ans. I did not know him.

Ques. Do you know when he died?

Ans. Do not know. I did not know him.

Ques. How long have the owners of that grant been in possession of it, so far as you know?

Ans. Since the year 1849. I lived in Santa Fé prior to that time. In 1849 I went to said place to get married. I then saw the place for the first time.

Ques. by surveyor general. You state that the papers in this case you obtained from the owners of the grant to bring here and file. From whom did you obtain them?

Ans. I obtained said papers from Manuel Lucero, José Juan Lucero, Martin Lucero, José Ma. Lucero, José Antonio Sandoval, Juan Teodoro Lucero. The papers were handed me by Francisco Lucero.

Ques. Did you read the papers at that time or any other?

Ans. I read the copy and a few words of the original.

Ques. What was the purport of the copy?

Ans. It was a copy of the original grant, the original being torn and hard to read.

Ques. When you was there, in 1849, did you see any grant papers at that time?

Ans. Yes.

Ques. What were the circumstances under which you saw them?

216 Ans. My father-in-law had the papers and he showed them to me.

Ques. Who was your father-in-law?

Ans. Antonio Serafin Lucero.

Ques. Was he one of the owners of the grant?

Ans. He was one of the heirs of the grant.

Ques. What relation was he to the grantee?

Ans. He was great-great-grandchild of the grantee.

Ques. Then you and your wife inherited a portion of this property?

Ans. Yes.

Ques. You are therefore an interested party to the investigation?

Ans. My wife had an interest in the grant and sold it.

Ques. When you sold what was the nature of the deed that you made to the party purchasing—was it quitclaim or a warranty deed?

Ans. I sold my part of the grant thinking the title to same was all right.

Ques. Here was shown the witness a deed in Spanish containing covenant of general warranty, and he was asked if it is a similar deed to that executed by himself and wife to the purchaser of his wife's interest.

Ans. It was.

Ques. Are you certain that the papers shown you this morning—the Spanish documents—are the same that you delivered here for the grant-owners?

Ans. Yes; they are the same.

Ques. How do you know they are the same?

217 Ans. Because I had them in my hand now and had them before.

Ques. I want to know how you know. Do you know from any mark in the papers or from reading?

Ans. Because when I saw the papers before they had the names of Juan Antonio C. de Baca, Juan Armigo, Esteban Aragon, and the paper contains the same names now.

Ques. Is that the only way you know them?

Ans. Also by the name of the grantee.

Ques. Did you ever read the papers all through?

Ans. I read them all through, but do not remember all the contents thereof, as it is many years since.

Ques. You state in your direct examination that you did not remember whether or not you ever brought a copy of this paper to the surveyor general's office. Now, what are the facts about it?

Ans. I do not remember whether I brought a copy or no, but I believe the copy was with the papers I brought.

Ques. You state that the general reputation in regard to the time the grant papers were in the possession of the owners was that they were in their possession from the time they were executed. Now, state from whom you derived such information—name the parties.

Ans. Antonio Serafin Lucero, Manuel Lucero, Jose Juan Lucero, Meregildo Lucero, Lauriano Lucero, Pablo Lucero, Telesfor Lucero, José Maria Lucero, Juan Teodoro Lucero, Francisco Lucero,

218 Jose Lucero, Cristobal Lucero. From the above persons I derived the information that the grant was in the hands of the owners since it was made.

Ques. When and where did Antonio Lucero tell you anything about it?

Ans. At Peña Blanca in 1849.

Ques. When and where did Manuel Lucero tell you anything about?

Ans. At Peña Blanca, at the same time, he being a brother of Antonio Lucero.

Ques. When and where did José Juan Lucero tell you anything about?

Ans. I cannot tell what day or what year, but it was since 1849 when all have told me about it. José Juan Lucero told me about it at Cochiti, after I was married, in the year 1849; do not remember the day or year.

Ques. All these parties you have named claim to be interested in the grant, are they not?

Ans. They are all heirs of the grant.

Ques. Did you ever hear any one else, in conversation with you, say anything about the time the papers have been in the possession of the owners?

Ans. I have been told also by Manuel Hurtado that the people of the Cañada de Cochiti lived on the grant for many years. I heard that long before I was married.

Ques. Was he interested in the grant?

Ans. I do not know.

219 Ques. Were there any other parties with whom you held any conversation on the subject of those papers?

Ans. If I am to name all the persons I would have to name all the people of Peña Blanca.

Ans. I heard Antonio Timoteo Armigo speak about these papers at——

Ans. I did not write a history of the case, and therefore do not remember exact dates. I heard him speak about the papers, but do not know whether it was in the years of 1849 or 1850 or afterwards.

Ques. What did this man say about them? State the conversation and how did he come to mention it.

Ans. Talking about the feast of Guadalupe, he said many years past he used to go to the feast at that place. He said that when they used to go there there were great many people there, and that Loreto Lucero had many cattle and the Navajo Indians drove them all away and killed him in his house. He said nothing about the papers, simply said they lived on a grant.

Ques. Was this conversation about the grant papers before or after you first saw them?

Ans. My father-in-law spoke to me about them before I saw them the first time, and then showed the papers to me. The other parties I heard speaking about them afterwards.

220 Ques. Is it not a fact that when these parties spoke of the papers generally that the copy was never refer-ed to as distinguished from the other papers?

Ans. They spoke about the copy, but José Juan called it "Patrio Real."

Ques. Is it not a fact that the first you knew of your own knowledge about the copy was this morning, when it was shown you?

Ans. I knew of the copy, but did not know whether it had been brought here with the other papers or not until I saw it this morning.

Ques. Then you do not know whether you brought the copy here with the other papers or not, as it might have been left here by some other, might it not?

Ans. I do not know whether I brought it or not. It might have been brought by some one else.

Ques. Then you really know nothing about the copy of your own knowledge except what you have acquired today?

Ans. I saw it in the hand of my father-in-law and can proved it if so required.

Ques. When and where did you see it in his possession?

Ans. I saw it at Peña Blanca, at his house, in the year 1849, when I was married; I read it at that time.

Ques. How far is Peña Blanca from this grant?

Ans. Am not sure, but think it is about five or six miles.

221 Ques. How long did you live in Peña Blanca?

Ans. Lived at Peña Blanca all the time since 1849, with the exception of 8 years I lived in Conejos, Colo.

Ques. Were you ever at the cañada on the grant?

Ans. I have been there many times to see my father-in-law.

Ques. Did your father-in-law live on the grant or at Peña Blanca?

Ans. He lived on the grant. For a short while he moved to Peña Blanca, but returned to live on the grant.

Ques. Do you know anything about the boundaries of the grant? If so, state what they are.

Ans. The eastern boundary is the Rio Grande; the west boundary the top of the Jemez mountains; the north boundary is the old pueblo of the Cochiti Indians, and the southern boundary is where the line touches the league of the Indians of Cochiti—of the present pueblo.

Ques. In what direction from the new pueblo is the old pueblo of Cochiti, and how far?

Ans. I have no personal knowledge of the old pueblo. I gave the boundaries as I saw them in the grant papers, and was told so by old people there.

Ques. Did you ever see the west boundary of the grant?

Ans. No.

Q. How do you know that these are the boundaries of the grant?

222 Ans. Because it is so stated in the grant.

Redirect examination by Mr. FISKE:

Ques. You state that you are not positive whether you brought that copy here or not—of the grant papers. What is the best of your recollection and belief on that subject?

Ans. I am not sure whether I brought the copy or not, but to the best of my knowledge and believe I think I brought said copy with the papers of the grant.

Ques. Do you recol-ect bringing a paper with those papers that was signed by Juan Antonio C. de Baca?

Ans. I do not know whether I brought a paper signed by Juan Antonio C. de Baca, but at the time I heard Mr. Ellison, then acting as interpreter, mention the name at the surveyor general's office.

Ques. How did Mr. Ellison come to mention that name?

Ans. When I came to the surveyor general's office I saw Mr. Ellison holding the paper and heard him mention the name of Juan Antonio C. de Baca. I suppose he read it from the paper.

Ques. Did you take a copy of the papers you brought at the time you brought them?

Ans. Yes.

Ques. Where is that copy now?

223 Ans. The copy and receipt are in the hands of Pablo Lucero. Pablo Lucero is at the Cañada de Cochiti.

Ques. Who made that copy and receipt?

Ans. The copy and receipt was handed me by Mr. Ellison, and the receipt was signed by the surveyor general.

Witness here was handed a paper purporting to be the record of the legal proceedings concerning the Cochiti grant before Antonio B. Armenta, and was asked if this was one of the papers brought by him to the surveyor general's office in 1866 or 1867. The witness was now shown the Spanish document purporting to be a copy of the original grant papers of the Cañada de Cochiti grant, and was asked when and where he saw this paper, if he ever saw it before.

Ans. The witness examines the paper and states: I saw this paper in the hands of my father-in-law, at Peña Blanca, in 1849, and have seen it since at various times.

Ques. State, if you can, the various dates and places since 1849 which you have seen this paper and in whose possession it was when you saw it.

Ans. After my father-in-law died the papers fell into the hands of Francisco Lucero, and then they came in my possession, when myself and Roman Baca, as commissioners, brought the papers to the office of the surveyor general with Sam. Ellison. These persons were all heirs to the grant. At that time the heirs of the

224 grant had a meeting and named a *a* commission, composed of myself and Roman Baca, to bring the papers of the grant to the office of the surveyor general. Mr. Ellison also came with Roman Baca and myself. It is possible that he was also a commissioner, but I do not remember.

Ques. by the surveyor general. Who brought the papers, you or Roman Baca?

Ans. I brought the papers to Santa Fé and delivered them to Mr. Ellison, who delivered them to the surveyor general; and I was present when he delivered them to the surveyor general.

Ques. When the papers were handed you to bring here were they wrapped up or sealed?

Ans. They were wrapped up in a handkerchief.

Ques. Did you undo them when you were on the way?

Ans. No.

Ques. Then when you received and delivered them they were wrapped up in a handkerchief?

Ans. Yes; they were wrapped in a handkerchief. When I handed them to Ellison he opened them and handed to the surveyor general.

Ques. Did you examine or read them after they left your possession—after you handed Mr. Ellison the package?

Ans. The surveyor general showed the papers to me after Mr. Ellison delivered them to him. I did not read them, but glanced over them and saw they were the same papers.

225 Ques. Who was the surveyor general at that time?

Ans. I do not remember, but I have a receipt with his name signed to same.

his
FELIPE x SANDOVAL.
mark.

Subscribed and sworn to before me this 21st day of July, A. D. 1882.

HENRY W. ATKINSON,
Surveyor General.

Adjourned to ten o'clock a. m. July 22, '82.

Investigation resumed pursuant to adjournment this July 22, 1882.

Present: H. W. Atkinson, surveyor general; Ireneo L. Chaves, special interpreter; E. A. Fiske, attorney for claimants.

MARIANO SALAS, being duly sworn, deposeth and saith:

Ques. by Mr. Fiske. Will you state your occupation, residence, and year in which you was born?

Ans. My name is Mariano Salas; am a farmer by occupation. I was born in the year 1808. My residence is at a place called "La Bentana," on the Rio Puerco, Bernalillo Co., New Mexico.

Ques. Where were you born?

Ans. I was born at "La Cañada de Cochiti," within the limits of the Cañada de Cochiti grant.

Ques. From 1808—for how many years did you reside on the grant?

Ans. I resided there about 28 years after 1808.

226 Ques. Who were in possession of that grant, if anybody was in possession of it?

Ans. There were many people living there then, and I suppose they all were heirs to the grant.

Ques. Was there any one at that time who owned an interest in the grant?

Ans. My father and grandfather lived there and they were heirs to the grant.

Ques. Were there any other persons at that time who were heirs of the grantee?

Ans. There were several others who claimed to have been heirs of the grantee living on the grant.

Ques. You say you were residing in the grant in 1817?

Ans. Yes.

Ques. Who was alcalde of that jurisdiction in that and the following year?

Ans. I think the alcalde then was Esteban Aragon, though I am not positive.

Ques. Who was the first alcalde of that jurisdiction you have any recollection of?

Ans. The first alcalde I knew of there was Juan Antonio C. de Baca.

Ques. In what year did Juan Antonio C. de Baca die?

Ans. He died in 1821.

Ques. Was he alcalde at the time of his death?

Ans. I believe he was alcalde at that time.

Ques. For how many years prior to that time was he alcalde?

227 Ans. He was alcalde, I believe, from the time I reached the age of reason up to the time of his death.

Ques. Were there any town in existence on this grant in 1821?

Ans. There was a town on the grant then; the same town is there yet.

Ques. Was there but one town in 1821?

Ans. There were two towns then, but one had been abandoned on account of the great danger of Indians depredations.

Ques. Who has been in possession of that grant since you knew it?

Ans. José Juan Lucero, Cristobal Lucero, Lauriano Lucero, Telesforo Lucero, and all their relatives.

Ques. Were those persons heirs of the grantee?

Ans. They were heirs of the grantee.

Ques. Within what boundaries did they have possession under that grant?

Ans. North boundary, El Rito de los Frijoles; south boundary, the league of the Cochiti Indians; eastern boundary, the Rio del Norte, and the west boundary is the top of the Jemez mountains.

Ques. by the SURVEYOR GENERAL:

Ques. Can you read or write?

Ans. I can read some, but cannot write.

Ques. Can you read writing?

Ans. I cannot read writing.

Ques. How do you know there is such a grant as the Cañada de Cochiti?

228 Ans. Since I was born I heard my father say there was such a grant, and some of the other people there, they also gave the boundaries.

Ques. Then all you know about it is what some one else has told you?

Ans. I know it because I lived there and have been through the grant many times.

Ques. Did you ever see any documents of title or any other evidence of this grant?

Ans. I never saw any.

Ques. Then how do you know of your own knowledge that there ever was a grant there?

Ans. I only know what my parents told me.

Ques. Then you know nothing about the grant except what you have been told?

Ans. I only know what I have been told.

Ques. How many people lived on the grant when you first knew it?

Ans. There lived a large number of people on the grant at the Cañada de Cochiti.

Ques. Can you state upon your own knowledge that any of these parties about whom you have testified as living on the grant and being heirs of the grantee were such heirs?

Ans. I know of my own knowledge that they were heirs.

Ques. How do you know it?

Ans. I knew them to be heirs because they had possession of the land and claimed the right to it.

Ques. Is that the only way you know it?

Ans. Yes, sir.

229 Ques. How do you know that Juan Antonio C. de Baca was alcalde of that jurisdiction when he died, in 1821, and previous thereto, as you have testified?

Ans. Because he sent a campaing at that time against the Navajos.

Ques. Is that the only means you have of knowing that he was alcalde at that time and previous?

Ans. Yes; that is the only means I have of knowing that he was alcalde then and prior to that time.

Ques. How do you know what the boundaries of the grant are?

Ans. Because my father told me what the boundaries were and I have seen them since.

Ques. How far is it between the north and south boundary?

Ans. There are, more or less, about six leagues.

Ques. Then the north boundary is about seven leagues from the present pueblo of Cochiti?

Ans. Yes; it is about seven leagues, more or less.

Ques. How far is it from the Rio del Norte, the east boundary, to the west boundary?

Ans. There are about seven leagues, more or less.

Ques. What mountain is it that is called Sierra de Jemez?

230 Ans. The highest mountain west of the Rio del Norte is the Sierra de Jemez.

Ques. In what direction is the Jemez mountains from the present Pueblo de Jemez?

Ans. It is to the east of the pueblo of Jemez, this side.

Ques. How long has that been known as the Jemez mountains?

Ans. Since the time people first inhabited the Cañada de Cochiti.

Ques. Where are the Valles mountains?

Ans. On the same range of the Valles mountains.

Ques. Are there any other mountains between the Jemez mountains and the Rio Grande on the east?

Ans. There are no mountains, but there are mesas and wooded hills.

Ques. You inherited an interest in this grant from your parents, did you not?

Ans. Yes, sir.

Ques. Then you have an interest in the grant?

Ans. Yes; I have there my property and that of parents.

Ques. Where have you resided since you moved from the grant in question?

This question was suggested by Judge Downs. Counsel for claimants object to question and answer thereto unless Judge Downs appears in the case — some interested party.

Ans. I moved to Santa Fé from Cañada de Cochiti and lived there 9 years; then went to Peña Blanca about two and a
231 half leagues from the grant; then moved to "La Bentana." I lived there ever since.

Redirect examination.

By Mr. FISKE:

Ques. State, if you know, what high or prominent hills or mountains there are on the Cañada de Cochiti grant. Going from the Rio Grande river, the east boundary of the grant, going west to the Sierra de Jemez, commence at the east boundary and describe them on their order from east to west.

Ans. The first mountain is called Sierrita de San Miguel; it is very high. The next, going west, is a peak called "Cerrito de las Balitas." This peak is high, but not as high as the first named. The next mountain, going west, is called Cerro del Chato. It is not very high. From there, going west, there are no mountains until you reach the Sierra de Jemez.

Ques. During the time that you testified that Juan Antonio Cabeza de Baca was alcalde, state whether or not the people who resided in the Cañada de Cochiti grant and vicinity generally recognized him as the legal alcalde of that jurisdiction.

Ans. Yes; all the people there recognized him as the legal alcalde there.

Ques. by SURVEYOR GENERAL:

Ques. How did the people of the Cañada de Cochiti recognized him as alcalde?

232 Ans. Whenever the Indians com-itted any depredations he used to send the people after them, and they always obeyed him.

Ques. Is that the only way you know they recognized him as alcalde?

Ans. Yes.

Ques. What year was it that he ordered them to fight the Navajos?

Ans. I heard that they were sent in the year of 1819 and 1820. He died in 1821.

Ques. Then you derived your knowledge of what you testified to from others who told you about it?

Ans. I knew personally that he was alcalde then, because he nominated my father to go on the campaign. I was there and saw it.

Ques. Did you hear the alcalde direct your father to go on the campaign?

Ans. He was ordered out by the constable by order of the alcalde.

Ques. What did the constable say to your father?

Ans. He told him to get ready with his arms and provisions to go out on the campaign against the Navajos.

Ques. How old were you then?

Ans. About 9 or ten years.

Ques. And that is the reason you state he was alcalde, is it?

Ans. That is the reason I knew he was alcalde.

Ques. by Mr. FISKE:

233 Ques. During the time mentioned that you knew him as alcalde, did he do any other official act as alcalde that you know in addition to those you testified to?

Ans. I do not know.

his
MARIANO x SALAS.
mark.

Subscribed and sworn to before me the 21st day July, A. D. 1882.

H. W. ATKINSON,
Surveyor General.

234 Examination of witnesses in the investigation of the Cañada de Cochiti (Antonio Lucero) grant resumed this August 17, 1882—present, Henry W. Atkinson, surveyor general; David J. Miller, translator and chief clerk, and H. L. Warren, attorney for grant claimants—when—

JESUS MARIA CABEZA DE BACA, being first duly sworn by the surveyor general, on his oath declares:

Question by Mr. Warren. What is your name, occupation, and residence?

Answer. My name is Jesus Maria Cabeza de Baca; my occupation is farmer, and my residence is Peña Blanca, in Bernalillo county and Territory of New Mexico.

Q. What is the date of your birth?

A. I was born in February, 1808, but do not know what day of that month.

Q. Were you acquainted with Juan Antonio Cabeza de Baca in his lifetime? And, if yea, state what relationship existed between

you and him, if any, and whether he is living or dead, and, if dead, the date of his death.

A. Juan Antonio Cabeza de Baca was my father, and, of course, I was acquainted with him. He died in the year 1835, in the Navajo country, being killed by the Navajo Indians when on a campaing against them, but I do not remember in what month of that year it occurred.

Q. Did you ever see your father, Juan Antonio Cabeza de Baca, write; if so, how frequently, and do you know his handwriting?

235 A. I have often seen him write and know his handwriting and his signature. He was a justice of the peace, and I often saw him write in his office.

(Here witness was shown a paper in the Spanish language, endorsed in English upon the back as follows: File 95. Felipe Sandoval, Roman Baca. Filed in the surveyor general's office by Felipe Sandoval and Roman Baca April 1, 1867. John A. Clark, sur. gen'l, and now marked at the commencement thereof Exhibit B, and is asked the following question:)

Q. Do you know in whose handwriting the signature Juan Antonio Cabeza de Baca signed to said document, Exhibit B, is? If so, state.

A. I do know it; it is the writing of my father.

Q. In whose handwriting is the certificate and signature thereto appended to said document, Exhibit B?

A. I think the writing in the body of the certificate is in my father's handwriting, and I am sure the signature to it is his writing.

Q. What official position, if any, in the jurisdiction of Cochiti did your father occupy?

A. He was alcalde.

Q. During what years, as you remember, was your father alcalde and how many times?

A. I do not remember in what years he was alcalde, but he was such for various terms.

Q. When do you first remember his being such alcalde?

236 A. I first knew he was alcalde when I was about 8 or 9 years old, and he may have been before.

Q. (The witness is shown the signature of Juan Esteban Aragon subscribed to said document, Exhibit B, and also to the certificate appended to said document, and is asked the following question:) Were you acquainted with Juan Esteban Aragon, is he living, and, if not, when did he die?

A. I was. He is now dead. He died, I think, about the year 1823 or 1824. He was alcalde also.

Q. Did you ever see Juan Esteban Aragon write, and do you know his handwriting and signature?

A. I did. He was my schoolmaster, and I believe I know his writing, having often seen him write, and he was also private secretary of my father.

Q. In whose handwriting are the said signatures of said Juan Esteban Aragon signed to said document and certificate now shown you and identified as Exhibit B?

A. They are the signatures of said Aragon.

Q. What official positions, if any, did said Aragon occupy for your father when you first knew of the latter being alcalde?

A. He was his secretary and clerk of his alcalde's court.

237 Q. In whose handwriting is the said document, Exhibit B, now shown you, commencing with the words "Es copia," down to and including the words "doy fee"?

A. I beli-ve it is Juan Esteban Aragon's.

Q. Did you know Luis Maria Cabeza de Baca? If so, is he living or dead, and, if dead, when did he die?

A. I did. He was my grandfather, and he died about the year 1823, 1824, or 1825.

Q. Did you know his handwriting? Did you ever see him write; and, if so, how often?

A. I did know it, having frequently seen him write. He wrote an ugly, grotesque hand.

Q. In whose handwriting is the signature subscribed to said Exhibit B now shown you?

A. I believe it is the signature of my grandfather, Luis Maria Cabeza de Baca, for that is the way he wrote.

Question by the surveyor general. Have you any interest in the result of this investigation?

A. I have none.

Q. Do you know anything in relation to the boundaries of the Cañada de Cochiti grant as to the localities?

A. I do not know where they are or what.

Q. You state in your direct examination that when you were eight or nine years old your father was alcalde. I want to know how you know he was alcalde at that time.

A. I know it by the fact that that business was transacted

238 before him by the people going there to settle their questions before him, and know that the alcaldes were elected by the people, and he was one of the alcaldes.

Q. What jurisdiction was he alcalde of?

A. Of the precinct or, as then called, the jurisdiction of Peña Blanca, embracing Santo Domingo, Cochiti, and the Cañada.

Q. What was the name of that jurisdiction as then called?

A. It was called indiscriminately the jurisdiction of Peña Blanca, of Cochiti, of Cañada, and San Buenaventura and Santo Domingo.

Q. Can you state positively that the name of Luis Maria Cabeza de Baca which appears on Exhibit B, heretofore shown you, is his genuine signature?

A. I can say positively it is.

Q. Can you say positively that the names of Juan Antonio Cabeza de Baca and Juan Esteban Aragon which appear on said Exhibit B are their genuine signatures?

A. Yes; they are their signatures.

Q. How do you know them to be such?

A. Because I have seen them write. Aragon was my schoolmaster, and I attended his school at Cochiti, whence he used to write letters to my father.

Q. Did your father and the other alcaldes keep a record of their official acts?

A. Of course, they keep a record of their official acts, as all the alcaldes did, and which record they delivered to their successors.

239 Q. Is the alcaldes' record of that jurisdiction still in existence; and, if so, where can it be found?

A. I presume it is in existence and in the keeping of the present alcalde, Felipe Sandoval, as the records pass to successors in office.

Redirect:

Question by Mr. Warren. When did you last see the alcaldes' records last spoken of?

A. I cannot recollect. I had these archives in my possession as alcalde two terms, and when I turned them over I believe I did not see them afterwards. My successor, to whom I turned over the archives, was Jesus Maria Montoya, now deceased. It was, I now remember, in the year 1837, when Armijo was governor.

Q. Were those records kept in bound books or bundles, or in what way?

A. Only in bundles, and a catalogue or list of them was given upon the change of authority.

JESUS MA. C. DE BACA.

Subscribed and sworn to before me this August 17, 1882.

H. W. ATKINSON,
Surveyor General.

JUAN LOPEZ, being by the surveyor general sworn, on his oath declares:

Question by Mr. Warren. What is your name, residence, and occupation?

A. My name is Juan Lopez; my place of residence is Peña
240 Blanca, in the county of Bernalillo and Territory of New Mexico, and my occupation is farmer.

Q. In what year were you born, and where?

A. In the year 1807, at Peña Blanca.

Q. How long have you lived at Peña Blanca?

A. All my lifetime.

Q. Did you know Juan Antonio Cabeza de Baca? If so, did you ever see him, write and do you know his handwriting and signature?

A. I knew him, and have seen him write, and know his handwriting and his signature.

Q. In whose handwriting are the respective signatures purporting to be those of Juan Antonio Cabeza de Baca, subscribed to the

document marked Exhibit B and to the certificate appended thereto respectively now shown you?

A. They are both in the handwriting of Juan Antonio Cabeza de Baca.

Q. What official position, if any, did Juan Antonio Cabeza de Baca occupy during his life and at what periods?

A. So far as I know, the position of justice or alcalde. I cannot say in what years or how long ago he was the alcalde, but when I first knew him as such was when I was about nine or ten years of age.

Q. Did you know him on Dec. 30, 1817? If so, state what you know of his official position at that time.

A. I did, and he was then alcalde.

241 Q. What was the jurisdiction called of which he was alcalde?

A. The jurisdiction of Cochiti.

Q. What public acts, if any, have you seen him perform as such alcalde?

A. He gave orders and tried suits brought before him. He was elected by the people, and performed his official duties at his public office, which he had at his residence as alcalde.

Q. In whose handwriting is the certificate appended to the document marked Exhibit B, commencing with the word "Ante" and ending with the words "doy fe," now shown you?

A. It is the handwriting of the said Juan Antonio Cabeza de Baca.

Q. Did you know Juan Esteban Aragon and Luis Maria Cabeza de Baca respectively? If so, do you know their handwriting, and have you seen them write?

A. I knew them both, have seen them write, and know their handwriting.

Q. In whose handwriting are the respective signatures "Juan Esteban Aragon" and "Luis Maria Cabeza de Baca" subscribed to the document marked Exhibit B now shown you?

A. The one was written by Juan Esteban Aragon and the other by Luis Maria Cabeza de Baca.

Q. Do you know in whose handwriting is the said document Exhibit B, commencing with the words "Es copia" down to and including the words "doy fee"?

242 A. It appears to me to be the writing of Juan Esteban Aragon.

Q. Is Juan Estaban Aragon living or dead?

A. He died so many years ago that I do not remember when.

Q. What position, if any, under Juan Antonio Cabeza de Baca did said Aragon occupy in the year 1817?

A. He was his secretary.

Q. Is Luis Maria Cabeza de Baca living or dead; and, if dead, when did he die?

A. He is dead many years, but how many I cannot state now.

Q. Did you know Juan Gonzales and Sebastian Salas or either of them?

A. I have heard them mentioned in Cochiti, and I believe I knew them both.

Q. Are they respectively living or dead?

A. They are both dead.

Q. Do you know the handwriting of either of them?

A. I do not.

Q. Do you know a tract of land known as the Cañada de Cochiti grant? If so, state where it is situated and how long you have known it.

A. I do know such a tract and have known it since I can remember. It is situated in the Cañada de Cochiti, in the county of Bernalillo and Territory of New Mexico.

243 Q. Who were in possession of that tract of land when you first knew it and have continued in possession since?

A. The Luceros.

Q. Who do you mean by the Luceros—the descendants of whom?

A. I mean the Luceros, the descendants of the grantee, Antonio Lucero.

Q. Do you know the boundaries of the tract known as the Cañada de Cochiti grant?

A. I do know them.

Q. What is the boundary of the said grant on the north?

A. The old pueblo of Cochiti.

Q. What is the southern boundary?

A. The Alto de las Cruces and the lands of the Indians of the pueblo of Cochiti.

Q. What is the boundary on the east?

A. The Rio del Norte.

Q. What is the western boundary?

A. The top of the Sierra de Jemez, so called.

Q. How long have you known the boundaries you have given to be the boundaries of the said grant?

A. For a great many years, and as long as I can remember I have heard them referred to as the boundaries among the people.

Q. Among what people do you mean?

A. I mean among the old people of Peña Blanca and that vicinity.

244 Q. Do you know the mountain you have referred to as the Sierra de Jemez, forming the western boundary; and, if so, how long have you been familiar with it?

A. I do know it and have known it since I was large enough to commence herding stock.

Q. How long have you known that mountain to be known as the Sierra de Jemez?

A. I have known it to be called the Sierra de Jemez ever since I was a boy eight, nine, or ten years old.

Q. Do you know the present Indian pueblo of Jemez?

A. I do know it.

Q. In what direction from that pueblo is the Sierra de Jemez of which you have spoken, and how far?

A. The sierra is to the west of the pueblo and is about half a league distant, somewhat more or less.

Q. Going from the Sierra de Jemez eastward to the Rio del Norte, is there any high mountain or range of mountains; and, if so, what are they called or by what name are they known?

(Question withdrawn and the following submitted:)

Q. Are there any mountains between the Rio del Norte and the Sierra de Jemez within the boundaries of the grant you have named; if so, by what name are they known?

A. The only one is the Sierra del Valle or Sierra Alta.

245 Q. Do you know of any other mountain or sierra than that you have named as the western boundary to be called or known as the Sierra de Jemez?

A. I do not.

Q. Are the Valle mountains you have spoken of as called the Sierra del Valle situated eastwardly or westwardly from the present pueblo of Jemez?

A. Towards the north.

Q. What is the distance from the Rio del Norte to the Sierra de Jemez within the grant?

A. Fifteen leagues, more or less.

Q. What is the distance between the north and south boundaries of the grant of the Cañada de Cochiti?

A. About three or four leagues.

Adjourned to nine o'clock tomorrow morning.

Investigation resumed at nine o'clock Friday morning, August 18, 1882.

Question by the surveyor general. How far back and to what year can you remember the occurrence of any event in your life?

A. To when I was about ten years old.

Q. What event occurred at that time that you remember?

A. I remember that at that time the Navajo Indians made a descent upon the people of the Cañada de Cochiti.

Q. In what year and month of the year was this raid made?

246 A. I cannot now remember just the year or the month of the year in which it occurred, but it occurred somewhere about the years 1817 to 1821.

Q. Where were you living then and what did you do?

A. I was living at Peña Blanca and engaged in farming affairs.

Q. What were you doing in 1817?

A. I was at school.

Q. How often did you see Juan Antonio Cabeza de Baca at that time?

A. As he lived then at Peña Blanca, I saw him continually.

Q. At what times and how long was he alcalde?

A. I cannot say at what times or in what years he was alcalde, but he was repeatedly in the office of alcalde.

Q. Then you do not know positively that he was alcalde in 1817?

A. He was alcalde then the first year I knew him, and when I was at school at his house in that year.

Q. Did you see him perform any official act during that year? If so, what?

A. I did, such as official orders of alcalde, which were executed by the officials.

Q. What orders? State some specific one.

A. Orders in matters of the people pending before him. I
247 remember no particular instance.

Q. How do you know these were official orders given as alcalde?

A. Because they were issued by him and were obeyed.

Q. Have you had any conversation with any one as to what you would testify to in this case?

A. I have not.

Q. You have testified that Cabeza de Baca was alcalde on December 30, 1817. I want to know how you remember that particular date so well.

A. From the papers in my possession, I having some showing that he was alcalde at that time.

Q. What is the nature of those papers?

A. Land documents; papers relating to land purchases in Peña Blanca, being deeds of conveyance, and so forth, authenticated before said Juan Antonio Cabeza de Baca as alcalde.

Q. At what date were they authenticated? Was any of them authenticated in 1817?

A. Yes, as he was then alcalde.

Q. What document or documents were authenticated by him in 1817?

A. I cannot say what particular ones, but he authenticated documents in that year.

Q. Did you ever read any of the documents?

A. Yes; I read some of them.

248 Q. Describe any one of those documents by date and when issued and to whom.

A. I cannot remember the particulars of any one of them.

Q. Then your knowledge of Cabeza de Baca's being alcalde in 1817 was derived from seeing documents authenticated by him that year?

A. Yes; and also from the fact that he was elected by the people.

Q. Were you present at the election?

A. I was there in the community and saw the primary meetings, etc., but was too young to participate, the meetings being at the house of Cabeza de Baca when I was there at school.

Q. When you first knew Cabeza de Baca as alcalde, what year had he been elected as such?

A. In the year 1817.

Q. Is it not a fact that the election occurred in 1818?

A. No.

Q. In what time of the year was the election?

A. I do not remember.

Q. When and where did you first see said Cabeza de Baca write?
A. At his home, in the year 1817.
Q. What was he writing then?
A. I do not know what, but he was writing.
249 Q. How often have you seen him write?
A. A great many times.
Q. About when was the last time you ever saw him write?
A. I cannot remember when.
Q. At the time you saw him write, can you state what document he was writing at any one time?
A. I cannot.
Q. How did you come to see him writing at any time?
A. By seeing him writing on casual occasions, as when at the school-house.
Q. Did he have the school at his residence?
A. He did.
Q. How often did you ever see Luis Maria Cabeza de Baca write, and when and where?
A. I have not seen him write, but I have seen his handwriting.
Q. If you never saw him write, how do you know it was his handwriting?
A. I never saw him write, but I have seen his signature.
Q. That is, you have seen his name, but never having seen him write, you do not intend to swear that that purports to be his signature on Exhibit B is his *bona fide* signature, do you?
A. Never having seen him write, I cannot swear that the name is his own signature.
250 Q. Have you ever been at the old pueblo of Cochiti?
A. I have.
Q. How far is it from the Rio Grande and in what direction?
A. About a league, more or less, towards the north.
Q. What year did you commence to herd stock?
A. In about the year 1817.
Q. How long did you continue to herd?
A. I was not a regular herder, but went sometimes out on that business.
Q. How much of the time in 1817 were you herding?
A. Not more than a month, and that to assist at the lambing.
Q. Where were you lambing at that time?
A. I do not remember where in that year, 1817, as we lambed at different places in different years.
Q. How did you acquire a knowledge of the location of the Sierra de Jemez?
A. By hearing it so called by the old settlers as I passed through the neighborhood and the pueblo of Jemez, which is adjacent.
Q. Is it not a fact that the mountains immediately near to the Jemez pueblo, both on the northeast, north, and northwest of
251 said pueblo, are called the Jemez mountain and have been so known for many years?
A. No; only the one I described as to the west of the pueblo of

Jemez; the others are the Valle mountain and some wooded hills to the north.

Q. How do you know that the Luceros had a grant at the Cañada de Cochiti?

A. Because I have always heard so and have always seen settlers at the place.

(Mr. Amado Chaves here appeared and stated that as part owner of the Cañon de San Diego grant he desired to enter an appearance as a party interested and waived notice so far as the taking of testimony of the witnesses now present *are* concerned, and requested that C. H. Gildersleeve, his attorney, be notified of the time and place of taking further evidence.)

Q. Then, all you know in relation to a grant at the Cañada de Cochiti and to the location of the Sierra de Jemez is from what you have been told by others, the latter by general reputation, is it not?

A. Yes.

Q. Have you any interest in this grant?

A. I have not.

Redirect question by Mr. Warren. From what fact or circumstance is it that you are able to remember the official position
252 and acts of Juan Antonio Cabeza de Baca in the year 1817?

A. Because I happen to retain the fact in my memory, and if I did not know what I have stated to be true I would not have so declared.

Q. In what year did you first go to school and where?

A. In the year 1817 and at the house of Juan Antonio Cabeza de Baca.

Q. You have stated that the only way you know the location of the Sierra de Jemez and that the Luceros had a grant called the Cañada de Cochiti is from what others have told you. Please state when and by whom you were first so told, whether such facts are matters of general reputation among the people of that vicinity, and how long they have been so.

A. Yes; from what others have told me, from about the year 1817 down to the present time, and these are matters of general repute among the people of that section and have always been so.

Q. From what circumstance did you testify on your direct examination that you knew the handwriting of Luis Maria Cabeza de Baca?

A. I know his handwriting from having often seen what I was informed and believe was his, and, from the writing shown me here in this examination and its similarity to that I have seen, I am satisfied it is his writing as I declared I believe it to be.

JUAN LOPEZ.

253 Subscribed and sworn to before me this 18 day of August, 1882.

HENRY W. ATKINSON,
Surveyor General.

SEPTEMBER 22, 1882.

MARIANO SALAS recalled.

Question by E. A. FISKE, of Fiske and Warren, counsel for grant-owners.

Question. In your former testimony the following question to you and answer by you appear:

"Q. In what direction is the Jemez mountains from the present Pueblo de Jemez?

A. It is to the east of the pueblo of Jemez—this side."

Is that question and answer correct, and have you any explanation to make in reference to it?

Answer. No; the question is not right. As I understood it, it was what direction was it from the Sierra de Jemez to the Pueblo de Jemez. The pueblo is to the east of the sierra and on this side of it.

Q. Is the way in which you answer the question now the way in which you answered it in your former testimony?

A. I answered then as I answer now that the pueblo is to the east, or, in other words, on the hither side of the sierra.

Question by the surveyor general. Did you not, in your former testimony, state positively that the Sierra de Jemez, referred to as the west boundary of the grant in question, was east or northeast of the Indian pueblo of Jemez and on this side of said pueblo?

254 Answer. I stated, in giving the north, south, east, and west boundaries, that the west boundary was the Sierra de Jemez. I did not—but I stated that the pueblo of Jemez was to the east of the Sierra de Jemez, and that the Sierra de Jemez was to the west of the pueblo. That was my answer.

Q. In what direction are the Valles mountain from the Jemez mountain, and how far are they apart?

A. It is to the north, and it is about six or seven leagues between them, the Jemez river running between them.

his
MARIANO x SALAS.
mark.

Sworn to and subscribed before me this September 22, 1882.

H. W. ATKINSON,
Surveyor General.

(Here follows photograph marked p. 255.)

256 Copia.

PLAINTIFFS' EXHIBIT 6*a*.

Spanish.

En este puesto San Jose de los huertas en el dia primero del mas de Noviembre de mil setesientos noventa y nueve anos ante mi Don. Cleto de Miera y Pacheco Alcalde mayor y capitan de Guerra de San Carlos de la Alameda su jurisdision y districto comparesieron

presentes ante mi, Antonio Jose Lovato vesino del Rio de Chama y Graviel Aragon vesino de la Canada de Cochiti de quenes doy fee conosco y dijo dicho Lovato que otorga que vende y con efecto vendio a la persona de Graviel Aragon setenta y tres varas de tierra de pan llevas con una casa de tres piesas que esta en la canada de Cochiti y dichas tierras son sus linderos por la parte del norte hasta onde alcansa la merced del sitio por el sur el Rio por el oriente con Tierras de Juan Ygnacio Salas y por el Poniente con tierras de Juan Domingo Apodaca y las dichas tierras y casa se las dio por el presio de cien pesos corrientes de la tierra y si mas valen or valer puedan le hace gracia y donacion pura mera perfecta y que el decreto llama inter vibos y dise dicho Lovato que dicha cantidad confiesa haber resevido a toda su satisfacion y contento y le sede todo su fuero domisilio vesendad y se las da libre de todo senso ypoleca para que pueda venderlas o enagenerlas en la persona o personas que fuere su voluntad usando de ellas como propias y para no tener derecho a ellas renuncia todas las leyes de la numerara pecunia prueba y paga y que dicho comprador las pueda usas por si sus hijos erederos y susesores mi que para allo se le ponga pleito ni demanda alguna por el su muger sus hijos y susesores y para el saneamiento de dicha venta se obliga con su persona y vienes a sacarlo en quieta y pasifica posesion suplicando a las reales justicias de su majestad no sea oido en jucio ni fuera de el antes si le
257 compelen al saneamiento de dicha venta y asi lo otorga dicho Antonio Jose Lovato ante mi dicho alcalde mayor y testigos de mi asistensia y no firmo por no saber hiselo yo dicho alcalde mayor con los testigos de asistensia a falta de escribano publico ni real que que no lo hay en este reyno de que doy fe.

CLETO MIERA PACHECO.

Asistensia:

BARTOLOME TRUJILLO.

BARTOLOME JURADO.

258 PLAINTIFFS' EXHIBIT 6*a*.

Translation.

In this place of San Jose de las Huertas on the first day of the month of November of 1799 before me Don Cleto de Miera y Pacheco alcalde mayor and mayor of San Carlos de la Alameda his jurisdiction and district personally appeared before me Antonio Jose Levato, resident of Rio de Chama and Gravil Aragon, resident of la Canada de Cochiti both of whom I know and accredit, and said the aforesaid Lovato, the grantor, that he sells and in fact sold to the person of Gravil Aragon, seventy-three varas of agricultural land with a three-room house, which is in the canada of Cochiti, and the boundaries of said land are on the north as far as the grant of this place reaches and on the south the river and on the east with lands of Juan Ygnacio Salas and on the west with lands of Juan Domingo Apodaca, he gave him the said lands for the price of one hundred dollars, current money of the land; if it is worth or

may be worth more he makes him a gift and donation pure simple and perfect, and that the law denominates *inter vivos*, and said the aforesaid Lovato that said amount he acknowledges having received, and that he is pleased and satisfied therewith, and he cedes to him all his privilege, homestead, vicinity, and he gives them to him free of all taxes and mortgage that he may be able to sell or transfer to the *the* person or persons he may please, and use them as his own, and not to have any claim against them he renounces all the laws of the *numerara pecunia*, proof and payment, and that said purchaser may use them himself, his sons, heirs and successors, without resorting to litigation to acquire such right, nor any complaint neither by himself nor by his wife nor by him, sons and successors, and to guarantee said sale he binds himself and property to leave it *it* in quiet and peaceful possession, and appeals to the royal justices of His Majesty that he may nor be heard in court nor out of it and before he may be compelled to guarantee such sale, and so was approved by Antonio Jose Lovato before me said alcalde mayor and assistant witness, and he did not sign, I said alcalde mayor with the assistant witness for want of a *natoray* public of which there is none in this kingdom, to which I certify.

CLETO MIERA PACHECO.

BARTOLOME TRUXILLO.

(Here follows map marked p. 259.)

260 PLAINTIFFS' EXHIBIT 7*a*.

En este pueblo de San Buenaventura de Cochiti en diez y ocho dias del mes de Octubre de mil setecientos ochenta y nuebe anos parecieron ante mi, Don Antonio de Armenta, alcalde mayor de dicha jurisdicion de los Queres, Lauriano Lucero, Benito Lucero y Jose Lucero, hambos tres vecinos de la canada de Cochiti a quines doy fee conosco, y digo dicho Laureano Lucero que bendia y con efecto bendio a Antonio Lucero vecino del rio de Tesuque, en la propia canada de Cochiti, un pedazo de tierra que se compnoe de oriente a poniente de quatro cientas siete varas que por la parte del oriente linda con tierras de Antonio Tafoya, y por el poniente linda con tierras de Juan Lucero, y por lo que mira por la parte del rio linda con tierras de Juan Domingo Salas y Juan Gallego y dicha tierra se compone por este rumbo de ciento y viente y nueve varas, que la espresada tierra la ubo el nominado Laureano Lucero por erencia de su finado padre, como tambien, dicho Antonio Lucero, les hase gracia y donacion de dicha tierra a mis his hijos amba mencionados Benito y Jose para que como suia propia la gozen con toda libertad y dicha tierra la vendis dicho Laureano a dicho Antonio Lucero por el precio y cantidad de cientos pesos de la tierra y sus corrientes de cuia cantidad dijo el espresado Laureano Lucero que confiesa acer recibido de mano de dicho Antonio de lo que queda pagado contento y satisfecho y que si mas vale dicha tierra y que si mas bale or bales pueda de la demasia le hase gracia y donacion a

dicho Antonio, pura, mera, perfecta y irrebocable que el derecho llama inter vivos sobre que renunci a las leyes de la non numeratta pecunia, prueba y paga, las de duobus resdevendi y autentica perfide sobreque no le pondran pleyto ni demanda avra ni an ningum otro tiempo ni por si ni por ninguno de mis hermanos ni otro eredero, y que si acaso por alguna persona le pusiere pleito demanda y contradicion alguna que saldra a la defensa a mi costa hasta dejarlo en quieta y pacifica posesion de la espresada tierra que bendio y da poder a las justicias de su majestad en especial a las de esta jurisdicion para que por todo rigor de derecho le compelen y apremien al cumplimiento de esta escritura como si fuera por sentencia definitiva de juez competente pasada con autoridad de cosa juzgada y ala entriega de dicha tierra ce allo presente Jose Antonio Lucero y Juan Domingo Jaramillo para cuio sanehamiento obliga y obligo su persona y bienes raizes y muebles habidos y por haber, todo lo cual otorgo por ante mi dicho alcalde mayor y testigos de asistencia con quienes autuo a falta de escribano real que no lo hai en este reyno no firmo el otorgante porque digo no saber firnelo yo dicho alcalde maior con los de mi assistansia en el espresado pueblo en dicho dia, mes y ano de que doy fee.

ANTONIO DE ARMENTA,
Alcalde Mayor.

Testigos:
SANTIAGO LOVATO.
JUAN JOSE PADIA.

Otro si digo, que las entradas y salidas de dicha tierra expresada tanto por el norte como por el sur se las dan libres al expresado Antonio Lucero para que dicho su hijo goze de ellas con amplitud y libertad sin que ninguno les ponga impedimiento por ser acredar a ellas. Vale.

261

ANTONIO DE ARMENTA.

Digo yo, Benito Lucero, que traspaso el derecho de dichas tierras para que disfrute de ellas como propias a Bisente Tafoya, que me dio el dinero por ellas de que pagado y satisfecho.

262 PLAINTIFFS' EXHIBIT 7*a*.

Translation.

In this pueblo of San Buenaventura of Cochiti on the 18th of October, 1789 personally appeared before me, Don Antonio de Armenta, alcalde mayor of said jurisdiction of the Queres, Lauriano Lucero, Benito Lucero and Jose Lucero all three residents of the canada of Cochiti whom I know and accredit and Lauriano said he did sell and in fact sold to Antonio Lucero, resident of Rio Tesuque in the canada of Cochiti proper, a piece of land which comprises four hundred and seven varas from east to west; its boundaries on the east side are with lands of Antonio Tafoya; on the west side with lands of Juan Lucero, on the side of the river with lands of Juan Domingo

Salas and Juan Gallego, and said land is composed on that side of one hundred and twenty-nine varas, and which land so sold the said Lauriano Lucero received as inheritance from his late father also said Antonio Lucero makes grant and gift of said land to my two sons above mentioned, Benito and Jose, that they may as their own enjoy it with all freedom. Said Lauriano sold said land to said Antonio Lucero for the price and sum of three hundred dollars current money of the land with which sum the said Lauriano said and acknowledges he has received from the hands of said Antonio, with which he is paid, pleased and satisfied, and that if the said land is or may be worth more, of the excess in value he makes him grant and gift to said Antonio, pure, simplt, perfect and irrevocable, denominated by the law *inter vivos* whereupon he renounces the laws of the *non numeratta pecunia*, proof and payment, those of *duobus resdevendis y autentica perfide*, that he will not dispute nor claim it, now nor at any other time, neither for himself nor by any of his brothers nor any other heir, and in case it should be disputed or claimed by any other person, that he will protect him at his own expenses until he is left in a quiet and peaceable possession of said land he sold, and gives power to His Majesty's courts, and especially to those of this jurisdiction that he may with all rigor of the law be compelled to the fulfilment of this conveyance as if by definitive sentence passed by a competent judge, sentence passed, tried judged and affirmed, and at the delivery of said land Jose Antonio Lucero and Juan Domingo Trujillo were present; for the guarantee whereof he binds and did bind his person and personal and real property he has or may have; all of which he granted before me the said alcalde mayor and assistant witnesses with whom I act in the absence of a notary public or royal, of which there is none in this kingdom. The grantor did not sign because he said he did not know how to sign. I signed it, the said alcalde mayor, with those of my assistance in the said pueblo and said day month and year of which I certify.

ANTONIO DE AREMENTA. [RUBRIC.]

Witnesses:
JUAN JOSE PADIA.
SANTIAGO LOVATO.

I furthermore say that the entrances and outlets of said land on the north as well as on the south he gives them free to the mentioned Antonio Lucero, that his said sons may enjoy it with ample liberty, without the obstruction of anybody, they being entitled thereto. Valid.

ANTONIO ARMENTA. [RUBRIC.]

263 I, Benito Lucero, say that I transfer the right of said lands, that he may use them as his own, to Benito Tafoya, because he gave me the money for them and I am paid and satisfied.

264 PLAINTIFFS' EXHIBIT No. 7*b*.

On this 20th day of May, 1885, before me, Jacob F. Laderer, a U. S. deputy surveyor in and for the Territory of New Mexico, personally appeared Manuel Hurtado, of lawful age, and who, having been by me first duly sworn, deposeth and saith in answer to the following interrogatories:

Question. State your name, age, and place of residence.

Answer. My name is Manuel Hurtado; my age is 58 years, and I reside at Cochiti pueblo, in Bernalillo county, Territory of New Mexico.

Ques. Are you acquainted with the Cañada de Cochiti land grant; and, if so, how long have you known it?

Ans. Yes; I know the grant ever since I can remember, which is over 40 years.

265 Ques. Do you know the location of the old pueblo of Cochiti, which forms the north boundary call of said grant; if so, where is it located?

Ans. I know the location of the old pueblo of Cochiti. It is situated about 3 leagues northwest of the present pueblo of Cochiti.

Ques. Do you know the location of the lands of the Cochiti Indians, which forms the south boundary call of said grant; if so, where is it located?

—. I know its location; the north boundary of the lands of the Cochiti Indians is about one league north of the pueblo of Cochiti.

Ques. Do you know the location of the Rio Grande (river), which forms the east boundary call of said grant; if so, where is it located?

266 Ans. Yes; it runs through the lands of the Indians of Cochiti.

Ques. Do you know the location of the Jemes mountains, which forms the west boundary call of said grant; and, if so, where is it situated?

Ans. Yes; they are about 25 miles west of the Rio Grande and west of the Jemes river.

Ques. How do you know the location of these natural objects?

Ans. From a personal knowledge and general reputation since I can remember.

Ques. Have you any interest in said grant; and, if so, what interest have you?

Ans. I am one of the heirs of the grantee.

(S'd) MANUEL HURTADO, *Deponent.*

267 Subscribed in my presence and sworn to before me this 20th day of May, 1885.

JACOB LADERER,
U. S. Deputy Surveyor.

268 PLAINTIFFS' EXHIBIT 8*a*.

En este pueblo de San Buenaventura de Cochiti jurisdicion de los Queres en veinte y cinco dias del mes de Enero de mil setecientos noventa anos parecieron ante mi dn. Antonio de Armenta alcalde mayor de dicha jurisdicion Antonio Benito Lucero y Miguel Chabes vecinos del puesto de Nuestra Senora de Guadalupe de la canada de Cochitia quienes doy fee conosco y digo dicho Lucero bendia y con efecto bendio a dicho Chaves en la propia canada un pedaso de tierra de labor que se compone de oriente a poniente de cuarenta y cinco varas y de norte hasta onde alcansa el propio kindero y por el sur hasta el barranco que esta a orilla de arroyo que esta por el norte y dichas cuaranta y cinco varas las bendio el nominado Lucero al espresado Chabes por el precio y cantidad de cuarenta y cinco pesos de la tierra y sus corrientes de cuyacantidad el referido Lucero confiesa aber recevido de mano de dicho Miguel Chaves a mi contento y satisfacion y se daba y se dio por satisfecho y por pagado y que no vale mas dicha tierra y que si, mas vale o valer pueda de la demasia le hace gracia y donacion a dicho Chaves pura mera perfecta e yrrebocable que el derecho llama inter vivos sobre que renuncia las leyes de la non numeratta pecunia prueba y paga las de duobus resdeviendi y autentica perfide sobre que no le pondran pleito ni demanda ahora ni en ningun tiempo ni por si ni por su mujer ni por sus hijos ni por ninguno de los demas erederos de dicho Lucero y que si acaso por alguna persona se le pusiere pleito demanda o contradicion alguna que saldra al reparo a mi costa hasta dejarlo en quieta y pacifica poseccion del espresado pedaso de tierra que le ha bendido y da poder a las justicias de su magestad en especial a las de esta jurisdicion para que por todo rigor de derecho le compelen y aprenien al cumplimiento de esta escritura como si fuera por sentensia definitiva de jues competente pasada con autoridad de cosa juzgada para cuyo sanehamiento obliga y obligo su personas y bienes raises y muebles habidos o por haber todo lo cual otorgo por ante mi dicho alcalde mayor y testigos de asistensia con quienes autuo a falta de escribano real que no lo hay en este reyno y lo firmo conmigo y los ynfranscritos en el espresado pueblo en dicho dia mes y ano que de tofo doy fee.

ANTONIO DE ARMENTA.
BENITO LUCERO.

Otro si digo que quedo dicho chabes con la condicion que si acaso en algun tiempo quisiera bender a alguno dicha tierra sera a los propios erederos, vale.

ARMENTA.

Digo yo Miguel Chabes que traspaso mi derecho en esta escritura en Sor. Jose Juan Lucero para que la documente por el precio y cantidad de viente y dos pesos y cuatro reales al corriente de la tierra, Testigos Sor. Jose Maria Maese y Sor. Manuel Lobato y para que conste le di mi traspaso hoy 18 de Febrero de 1822. Miguel

Chabes y por no saber firmar roque a Francisco Albino Aragon lo firmara por mi. A ruego.

FRANCISCO ALVINO ARAGON.

269 PLAINTIFFS' EXHIBIT 8*a*.

Translation.

In this pueblo of San Buenaventura of Cochiti, jurisdiction of the Queres, on the 25th day of January, 1790, personally appeared before me, the Don Antonio de Armenta, alcalde mayor of the said jurisdiction, Antonio Benito Lucero and Miguel Chaves, residents of the place of our Lady of Guadalupe of the canada of Cochiti, both of whom I know and accredit, and said Lucero said that he did sell and in fact sold to said Chaves a piece of agricultural land in the canada proper, which is composed of forty-five varas from east to west, on the north as far as its own boundary and on the south as far as the bank of the arroyo which is on the north, and said forty-five varas the aforesaid Lucero sold to the said Chaves for the price and sum of forty-five dollars current money of the land, which sum the said Lucero acknowledges having received from the hands of said Miguel Chaves to his pleasure and satisfaction, and he declares and did declare that he was satisfied and paid and that the said land is not worth more and if it is or may be worth more, of the excess in value he makes grant and gift to the said Chaves pure simple perfect and irrevocable denominated by the law *inter vivos* whereupon the renounces the laws of the *non numeratta pecunia* proof and payment those of *duobus resdesvendi y autentica perfide*, that they will not dispute nor claim it now nor at any other time neither himself nor his wife nor his children nor any other of the other heirs of said Lucero, and that if in case any person should dispute or claim it he will protect him at his own expenses until he is left in a quiet and peaceable possession of the said land so sold and he gives power to His Majesty's courts and particularly to those of this jurisdiction that he may with all rigor of the law be compelled to the fulfilment of this conveyance as if by a definitive sentence passed by a competent judge, sentence, passed, tried, judged and affirmed for whose guarantee he binds and did bind his person and any personal or real property he has or may have; all of which he granted before me said alcalde mayor and assistant witnesses with whom I act in the absence of a notary royal or public, of which there is none in this kingdom; and he signed it with me and the undersigned in the said pueblo on said day month and year; all of which I certify.

ANTONIO DE ARMENTA. [RUBRIC.]
BENITO LUCERO. [RUBRIC.]

I furthermore say that the said Chaves agreed that in case he should wish to sell the said land to any one it shall be to the heirs.

ARMENTA. [RUBRIC.]

I, Miguel Chaves, declare that I transfer my right in this deed to Sor. Jose Juan Lucero, that he may deed it, for the price and sum of twenty-two and half dollars current money of the land—witnesses, Sor. Jose Maria Maes y Sor. Manuel Lovato—and that it may be evident I gave him my deed today, 18th of February, 1822—Miguel Chaves—and not knowing how to sign I requested Francisco Alvino Aragon to sign it for me.

By request:

FRANCISCO ALVINO ARAGON.

270 PLAINTIFFS' EXHIBIT 9.

Spanish.

En este pueblo de San Buenaventura de Cochiti jurisdicion de los Queres en cinco dias del mes de Agosto de mil setecientos noventa y tres anos ante mi Don Antonio de Armenta alcalde mayor de dicha jurisdicion autuandó como jues receptor con testigos a falta de escribano real que no lo hay en todo este gobierno parescieron Juan Domingo Jaramillo y Alejandro Roybal ambos dos becinos de la canada de Cochiti a quienes doy fee conosco y digo dicho Juan Domingo Jaramillo que bendia y bendio a Alejandro Roybal unpedaso de tierra en la mencionado candada de Cochiti que cual lo ubo por compra que y so dicho Jaramillo a Antonio Jose Armijo vecino de Santo Domingo y la dicha tierra que tiene bendida el dicho Jaramillo a mencionado Alexandro Roybal se compone de treinta y tres baras de ancho que se de oriente a poniente y de largo se compone por la parte del norte hasta el rion y por el sur las lomas y que ahora se la da y bende al dicho Roybal por la cantida de cuarenta pesos de tierra y sus corrientes y la espresada cantidad de los cuarenta pesos confiesa el otorgante haverlos recevido cabalmente a su entera satisfacion y quedo satisfecho y pagado y que no vale mas dicha tierra y que si mas vale or valer pueda de la demacia le hace gracia y donacion al dicho comprador pura mera perfecta e yrrebocable que el derecho llama inter vivos sobro que renuncia las leyes de la non numeratta pecunia prueba y paga pues la tierra bendiada linda por la parte del oriente con tierras de Juan Jose Aragon y por el poniente con tierras del mismo comprador y digo dicho comprador que no le pondria pleito ni demanda ahora ni en ningun tiempo ni por si ni por su mujer ni por sus hijos ni por otra persona, y que si acaso se lo pusieran que no sean oidos en juicio ni fuera del y que saldra a la demanda a su costa hasta dejarlo en quieta y pacifica posecion de la espresada tierra que ha bendido y da poder al las justicias de su magestad en particular a las de esta jurisdicion para que por todo rigor de derecho le compelen y apremien al cumplimiento de esta escritura como si fuera por sentensia definitiva de jues competente pasada con autoridad de cosa juzgada para cuyo sanehamiento obliga y obligo su persona raises y muebles habidos y por haber todo lo cual otorgo el dicho Jaramillo por ante mi el dicho alcalde mayor y testigos de assistensia autuando como dicho en el espresado en

dicho dia mes y ano, no firma el otorgante porque dijo no saber fermelo yo dicho alcalde mayor con los de mi asistencia de que doy fee.

ANTONIO DE ARMENTA. [RUBRIC.]

Testigos:
BENITO LUCERO. [RUBRIC.]

271 PLAINTIFFS' EXHIBIT 9.

Translation.

COCHITI EXHIBIT No. 9.

In this pueblo de San Buenaventura de Cochiti jurisdiction of the Queres on the 5th day of August 1793 personally appeared before me Don Antonio de Armenta alcalde mayor of said jurisdiction acting as treasurer judge with two witnesses in the absence of a notary royal or public of which there is none in this government Juan Domingo Jaramillo and Alexandro Roybal both residents of the canada of Cochiti, whom I know and accredit, and the said Juan Domingo Jaramillo said that he sold and did sell to Alexandro Roybal a piece of land in the said canada of Cochiti which he came into possession of by purchase said Jaramillo made of Antonio Jose Armijo resident of Santo Domingo and the said land which the said Jaramillo has sold to the said Alexandro Roybal is composed of thirty-three *wide*, from east to west and long on the north side as far as the river and on the south as far as the hills and that now he gives and sells it to the said Roybal for the sum of forty dollars current money of the land the vendor acknowledges having received complete to his entire satisfaction and was satisfied and paid and that said land is not worth more and that if it is or may be worth more of the excess in value he makes grant and gift to the said purchaser pure simple perfect and irrevocable denominated by the law *inter vivos* whereupon he renounces the laws of *non numeratta pecunia* proof and payment the boundaries of the land sold are on the east with lands of Juan Jose Aragon and on the west with lands of the same purchaser and said vendor said that he would not dispute nor claim it now nor at any other time neither by himself nor his wife nor his children nor any other person and if they should dispute or claim it that they may not be heard in court nor out of it and that he will protect him at his own expenses until he is left in a quiet and peaceable possession of said land he has sold and empowers the courts of H. M. particularly those of this jurisdiction that they may with all the riger of the law compel and force him to the fulfilment of this conveyance as if by a definite sentence of a competent judge, sentence passed tried judged and affirmed for whose guarantee he binds and did bind his person and any real and personal property he has or may have all of which said Jaramillo granted before me said alcalde mayor and assistant witnesses acting as already stated in the said pueblo in said day month and year. The vendor did not sign because he said he did not

know how to sign. I said alcalde mayor signed it with those of my assistance, which I certify.

ANTONIO DE ARMENTA. [RUBRIC.]

Witness:

BENITO LUCERO. [RUBRIC.]

272 PLAINTIFFS' EXHIBIT 9*a*.

TERRITORIO DE NUEVO MEXICO, }
Condado de Santa Ana. }

Personalmente se presenta ante mi el abajo firmado Jues de Pas en y por el dicho condado de Sta. Ana Luis Maria Lucero a quien conosco personalmente y dijo con su mutuo consentimiento bendio y traspaso a Don Jose Juan Lucero la tierra que costa en el anterior documento por el precio de sesenta y dos pesos a mi mismo entregados y pagados por el dicho Jose Juan Lucero y dicho dinero me lo pago con dos terneras de dos a tres anos, y doce pesos valor recibido y ademas yo el infreserito jues declaro y certifico que obrando en conformidad con las leyes de traspaso de tierras de este territorio y en la presencia de Manuel Montano y Jose Antonio Sandoval testigos quienes igualmente declaron conoser a otorgante una examinacion le fue hecha ante mi dicha corte al referido Luis Maria Lucero quien declaro afirmativamente que la venta y traspaso que costa arriba fue ejecutada con toda su voluntad sin compulcion o violencia alguna y por lo tanto para que este traspaso no caresca de lijimidad en favor de interesado, lo firmo y el ante dicho jues con los anunciados dia 11 de Septiembre de 1868.

LUIS MARIA LUCERO,
Otorgante.
MANUEL HURTADO,
Jues de Paz.

Testigos:

MANUEL x MONTANO.
Firma.
JOSE ANTONIO x SANDOVAL.
Firma.

273 PLAINTIFFS' EXHIBIT NO. 9*a*.

TERRITORY OF NEW MEXICO, }
County of Sta. Ana. }

Personally appeared before me the undersigned justice of the peace in and for the county of Sta. Ana Luis Ma. Lucero, whom I personally know and said that with his mutual consent sold and transferred to Don Jose Juan Lucero the land as it appears on the former document for the price of sixty-two dollars delivered to myself and paid by the said Jose Juan Lucero and said money he paid me with two heifers from two to three years and twelve dollars value received and furthermore I the undersigned judge declare and certify that acting in conformity with laws of the land transferes of this Terri-

tory, and in the presence of Manuel Montano and Jose Antonio Sandoval who also declared he knew the vendor an examination was made before my said court of the said Luis Maria Lucero who declared affirmatively that the sale and transfer was effectuated with his own free will without compulsion or force, and therefore that this transfer may not lack legality in favor of the interested party, I the foresaid judge sign it with the said Montano and Sandoval in my court-room in Cochiti this 11th day of September, 1868.

LUIS MA. LUCERO, *Vender.*
Signature.
MANUEL HURLADO,
Justice of the Peace.

MANUEL x MONTANO,
Signature.
JOSE ANRONIO x SANDOVAL,
Signature.
Wi-nesses.

274 PLAINTIFFS' EXHIBIT No. 10.

Spanish.

En este Pueblo de San Felipe en quince dias del mes de Abril de mil setescentos noventa y siete anos ante mi Don Cleto de Miera y Pacheco Alcalde mayor y Capitan de Guerra de San Carlos de la Alameda y quienes comparecieron presentes, ante mi Antonio Jose Lovato Besino de mi Sra. de Guadalupe de la Canada de Cochiti y Juan Ygnacio Salas becino tambien de dicho puesto a quienes doy fee conosco y dijo dicho Antonio Jose Lovato que otorga que vende y con efecto a la persona de Juan Ygnacio Salas su casa y tierras de pan llevan y dicha casa se compone de quatro piezas y la dicha tierra son ciento sesenta y cuatro baras de oriente a poniente y el dicho Antonio Jose Lovato las traspasa en dicho Juan Yanacio Salas y son sus linderos por la parte del norte hasta onde resa la escritura del sitio, y por el sur lo mismo, y por el Oriente con tierras de Antonio Rosa y por el poniente con tierras del dicho vendedor, y del R. P. Cavallero y las dichas tierras y casa se las dio dicho Lovato a Juan Ygnacio Salas por el precio y cantidad de doscientos y sinquenta pesos de la tierras corrientes en reses en cabras y caballo y minas y si mas bale o bales pueda dicha casa y tierras casa gracia y donacion cuia cantidad confiesa dicho Lovato tenerla recidida a toda su satisfacion y contento y cuia cantidad se da por contento y pagado y satisfecho sobre que renuncia dicho vendedor su propio fuero y domicilio y le ase gracia y donacion de dicha casa y tierras pura mera perfecta yrrebocable que el derecho llama inter vivos sobre que renuncia dicho vendedor su propio fuero domicilio y becindad y las leyes de la non numerata peania y que ablan sobre la mitad del justo precio y se las da libres de todo senso ypoteca para que pueda venderlas y cambiarlas a la persona que fuere su boluntad como propias suyas que son y que las goze por si y sus hijos y

275 erederos y susesores y sin que pora ello le sea puesto pleito ni demanda alguna por el susodicho Antonio Jose Lovato ni su muger e hijos ni susesores y si acaso se lo pusieron que no sean cidor en juicio ni fuera de el y dio poder quanto por derecho se requiere a las reales justicias de su magestad sin el que por si tienen para que con todo rigor de derecho le compelen y apremien al cumplimiento como si fuera por sentencia difinitiva dada por jues compatente consedida y no apelada y obliga al sananmiento de esta escritura obliga el referido dicho Lovato su persona viences mueblas raises habidor y por haber como real bendedor renuncia todos cuantos lelles alegor puedan a su favor que todo lo otorga el referido Antonio Jose Lovato ante mi dicho alcalde mayor y los testigos de mi asistencia y no lo firmo el dicho Antonio Jose Lovato por que dijo no saber y se lo yo a su ruego y los de mi asistencia con quienes autuo por rectoria a falta de escribano publico ni real que no lo hay de ninguna clase en este reino y en papel comun por no corres el sellado en dicho dias mes y ano de que doy fee.

CLETO MIERA PACHECO.

FRANCISCO MIERA PACHECO.
JOSE ANTONIO RODRIGUES.

276 PLAINTIFFS' EXHIBIT NO. 10.

Translation.

In this pueblo of San Felipe on the 15th day of April, 1797, before me Don Cleto Miera y Pacheco alcalde mayor and captain of war of San Carlos de la Alameada, personally appeared Antonio Jose Lovato, resident of our Lady of Guadalupe of the canada of Cochiti and Juan Ygnacio Salas, resident also of the same place, both of whom I know and accredit, and said Antonio Jose Lobato said that he sells and in fact sold to the person of Juan Ygnacio Salas his house and agricultural lands and said house is composed of four rooms, and the said lands are one hundred and sixty-four varas, from east to west, and the said Antonio Jose Lovato transfers them to the said Juan Ygnacio Salas, and its boundaries are: on the north side as far as stated on the instrument of the tract; on the south the same, and on the east with lands of Antonio Rosa, and on the west with lands of the vender and of the R. P. Caballero, and said Lovato gave the said land and house to Juan Ygnacio Salas, for the price and sum of two hundred and fifty dollars, current money of the land, in cattoe, goats, horse and mines, and if they are or may be worth more, said house and lands, of the excess in value, he makes grant and gift, which sum the said Lovato acknowledges having received to his satisfaction and pleasure, and with which sum he is pleased, paid and satisfied, whereupon said vendor renounces his privileges, homestead, and he makes him grant and gift of said house and lands, pure, simple, perfect and irrevocable, denominated by the law *inter vivos* whereupon he renounces his privileges, homestead and vicinity and the laws of the *non numerata pecunia* which

treat about the half of the just price, and he gives them to him free of taxes and mortgage that he may sell and exchange them to whomsoever he may please, as his own which they are, and that he himself may enjoy them his children, heirs and successors without dispute or claim by the aforesaid Antonio Jose Lovato, nor his wife children nor heirs, and if they should dispute or claim it that they may not be heard in court nor out of it, and gave power, which by right is required, to the royal courts of His Majesty that he may with all the rigor of the law be compelled and forced to the fulfilment, as if by a definitive sentence given by a competent judge, admitted and not appealed, and he binds himself to guarantee this conveyance, his person and his real and personal property, present or to come, as a royal vendor, he renounces all the laws that may be plead in his favor, all of which said Antonio Jose Lovato granted before me said alcalde mayor and witnesses of my assistance, and said Antonio Jose Lovato did not sign it, because he said he did not know how to sign it. At his request I and those of my assistance signed it, with whom I acted as a commissioner judge in the absence of royal or public notary of which there is none in this kingdom, and on common paper not having any with stamp, on said day, month and year, which I certify.

CLETO MIERA PACHECO.

Witnesses:
JOSE ANTONIO RODRIGUES.
FRANCISCO MIERA PACHECO.

277 PLAINTIFFS' EXHIBIT No. 11.

Spanish.

En este puesto de Nuestra Senora de Guadalupe de la Pena Blanca en cinco dias del mes de Junio de mil ochocientos veinet anos parescieron presentes por ante mi Don Juan Antonio Cabesa de Baca alcalde mayor de esta jurisdicion de San Buenaventura de Cochiti vicente Tafoya y Jose Maria Gallegos ambose becinos de la canada a quienes doy fee conosco, y digo dicho Tafoya que vendia y con efecto vendio al mencionado Gallego es a saber en el mismo paraje de dicha canada un casa de terrado que se compone de dos varas con mas un pedaso de tierra de pan llevan que se compone dicha tierra de doscientas veinte ydos baras tres quaras dicha casa y tierra la dio dicho Tafoya al Mencionado Gallego por el precio y cantidad de tres vestias caballares y tres cabras una fanega de mays con lo que quedo dicho Tafoya pagado contento y satisfecho y son sus linderos por el poniente con tierras de Miguel Chaves por el oriente con tierras del mismo Tafoyayt con tierras del difunto Juan Domingo Salas por el norte lo que resa la merced real de dicha canada por el sur con el rio y dise dicho Tafoya que de la demasia le ase gracia y donacion a dicha Gallego pura mera yrrebocable y que si mas vale o baler pueda, pues sede todo el domingo y senorio que antes tenia en dicha tierra y para todo lo cual obliga dicho Tafoy su persona vienes raises, muebles habidos y por aber y que

no le pordra pleito ni demanda, ni por si ni por sus hijos ni erederos y si acaso se lo pusieren, suplica a los reales justicias no seran oydos en juicio ni fuera del y que saldra a la demanda a qualesquiera persona o personas que quisiere yntrebenir al saneamiento de esta escritura asta poner a su costa en quieta y pacifica posecion y para su mejor costancia me suplicaron ambos dos que como alcalde ynterpusiera mi autoridad y decreto judicial y yo dicho alcalde dije que la ynterponia ynterpuse cuanta por derecho mes conferida firmandola con los de mi asistencia con quenes autuo a falta de escrib a no publico ni real que de ninguna clase lo hay en esta provencia, firmando como dicho en dicho dia mes y ano de que doy fee.

JUAN ANTONIO CABESA DE BACA,
Alcalde Mayor. [RUBRIC.]

Asistensia:
LUIS MA. CABESA DE BACA. [RUBRIC.]
Asistensia:
JOSE ANTONIO ARCHULETA. [RUBRIC.]

Digo yo Jose Gallego besino de nuestra senora de Guadalupe de la canada de Cochiti que traspaso el derecho de esta escritura en el besino Antonio Barela con todos sus senorio y dominio y por todo lo cual suplica al senor Alcalde Don Juan Antonio Cabesa de Baca ynterpusiera su autoridad y decreto judicial en dicho traspaso y dicho alcalde dixe que lo ynterponia ynterpuse cuamto por derecho me es conferido firmando con un testigo de mi asistensia de que doy fee.

JUAN ANTONIO CABESA DE BACA. [RUBRIC.]
Asistensia:
JOSE ANTONIO ARCHULETA. [RUBRIC].

278 COCHITI EXHIBIT NO. 11.

Digo yo Antonio Pascaul Barela que traspaso el derecho de esta escritura en el vecino Jose Juan Lucero con todos sus dominios y senorios comprendido en ella y para su mayo constancia suplique al Sor. Don Juan Antonio Cabesa de Baca ynterpusiera su autoridad y decreto judicial yo dicho alcalde dixe que lo ynterponia ynterpuse cuanto por derecho me es conferido firmandolo con un testigo de asistencia de que doy fee.

JUAN ANTONIO CABESA DE BACA. [RUBRIC.]

Asistensia:
MANUEL MONTOYA. [RUBRIC.]

279 PLAINTIFFS' EXHIBIT 11.

Translation.

In this place of our Lady of Guadalupe of the Pena Blanca on the 5th of June, 1820, personally appeared before me Don Juan Antonio Cabesa de Baca, alcalde mayor of this jurisdic-ion of San Buena-

ventura de Cochiti, Vicente Tafoya and Jose Maria Gallego, both residents of the canada, whom I know and accredit, and the said Tafoya said that he did sell and in fact sold to the above-mentioned Gallego, to wit, in the same place of said canada a house with a terrace which is composed of two varas besides a pi-ce of agricultural land and said land is composed of two hundred and twenty-two and three-fourths varas and said house and land the said Tafoya gave to the said Gallego for the price and sum of three horses three goats one fanega of corn with which said Tafoya was paid pleased and satisfied, and its boundaries are on the west with lands of Miguel Chabes on the east with lands of the said Tafoya and land of the late Juan Domingo Salas on the north as far as the royal grant of said canada on the south with the river and said Tafoya says that of the excess in value he makes him grant and gift to the said Gallego pure simple and irrevocable if it is or may be worth more and he cedes all the domain and sh*a*e which he had before in said lands for all of which said Taf*i*ya binds his person and any real or personal property he has or may have and that he will not dispute or claim it neither by himself nor by his children nor heirs, and if they should dispute or claim it he requests the roya*k* courts that they may not be heard or any person or persons who should interfere with the guarantee of this conveyance until left at his expenses in a quiet and peaceable possession and for its best validity both of them requested me to interpose my authority and judicial decree as alcalde and I said alcalde said that I would and did interpose it all which is by right conferred upon me signing it with those of my assistan*c*e with whom I act in the absence of a notary royal or public of which there is none in this province signing as stated on said day month and year, which I certify.

JUAN ANTONIO CABESA DE BACA. [RUBRIC.]

Witnesses:

LUIS MARIA CABESA DE BACA. [RUBRIC.]
JOSE ANTONIO ARCHULETA. [RUBRIC.]

I, Jose Gallego resident of our Lady of Guadalupe of t*n*e canada de Cochiti, say that I transfer to the neighbor Antonio Barela the right in the conveyance with its shares and domain for all of which I request the Sor. Alcalde Don Juan Antonio Cabesa de Baca to interpose his authority and judicial decree in said transfer. I said alcalde said that I would and did interpose it all which by law is conferred upon me signing it with witnesses of my assistance which I certify.

JUAN ANTONIO CABESA DE BACA. [RUBRIC.]

Witness:

JOSE ANTONIO ARCHULETA. [RUBRIC.]

280 COCHITI EXHIBIT No. 11.

I, Antonio Pascual Barela, say that I transfer the right in this conveyance to the neighbor Jose Juan Lucero with all its domains

and shares included in it and for its best validity I requested the Senor Alcalde Don Juan Antonio Cabesa de Baca to interpose his authority and judicial decree, and I said alcalde said that I would and did interpose it, which by the law is conferred upon me signing it with an assistant witness, which I certify.

JUAN ANTONIO CABESA DE BACA. [RUBRIC.]

Witness:
MANUEL MONTOYA. [RUBRIC.]

281 PLAINTIFFS' EXHIBIT 12.

En este puesto de Nuestra Senora de Guadalupe de la Canada de Cochiti jurisdicion de los Queres en veinte y cinco dias del mes de Marzo de mil setecientos y nobenta anos ante me Don Antonio de Armenta alcalde maior de dicha jurisdicion autuando como jues receptor a falta de escribano real que no lo hai en este reyno con dos testigos parecieron Antonio Jose Armijo y Juan Domingo Jaramillo evcinos de dicha jurisdicion a quienes doy fee conosco, y dijo dicho Antonio Jose Armijo que bendia y bendio a Juan Domingo Jaramillo un pedazo de tierra en la mencionada canada de Cochiti, que se compone de treinta y una varas y se las bendio a el dicho Jaramillo por la cantidad de treinta y un pesos de la tierra y sus corrientes y la espresada cantidad de treinta y un pesos confiesa el otorgante los a recibido cabalmente a su entera satisfacion y quedo satisfecho y pagado y que no vale mas dicha tierra, y que si mas vale or valer pueda de la demasia lo hace gracia y donacion al dicho comprador pura merea perfecta e yrrebocable que el derecho llama inter vivos sobre que renuncia las leyes de la non numerratta pecunia prueba y paga las de duos resdeviendi y autentica perfide juronibus, sobre que no le pondran pleito ni demanda, ahora ni en ningun otro tiempo ni por si ni por su muger ni por sus hijos ni por otra persona y que si acaso se lo pusieren que no sean oidon en juicio ni fuera del y y que saldra a la demanda a su costa hasta dejarlo en quieta y pacifica pocesion de la espresada tierra que bendio y sus linderos son por la parte del norte el rio de la propria canada y por el sur las lomas por el oriente linda con las tierras de Juan Jose Aragon, y por el poniente con tierras de Juan Salas y da poder a las justicias de su (Magestad) y en particular a las de esta jurisdicion para que por todo rigor de derecho le compelen y aprimien al cumplimiento de esta escritura como si fuera por sentencia definitiva de jues competente pasada con autoridad de cosa juzgada para cuio sanehamiento obliga y obligo su persona y bienes raise y mueble habidos y por haber todo lo cual lo otorgo dicho Armijo por ante mi dicho alcalde maior y testigos de asistensia autuando como dicho es en la espresada canda en dicho dia mes y ano. No firmo el otorgante porque dijo no saber firmelo yo con los de mi asistensia de que doy fee.

ANTONIO DE ARMENTA. [RUBRIC.]

SANTIAGO LOVATO. [RUBRIC.]

282 PLAINTIFFS' EXHIBIT 12.

Translation.

In this place of our Lady of Guadalupe of the canada of Cochiti of the jurisdiction of the Queres on the 25th day of March, 1790 personally appeared before me Don Antonio de Armenta alcalde mayor of said jurisdiction acting as juez receptor in the absence of a notary royal or public of which there is none in this kingdom with two witnesses, Antonio Jose Armijo and Juan Domingo Jaramillo both of whom I know and accredit, and said Jose Antonio Jaramillo said that he did sell and in fact sold to Juan Domingo Jaramillo a piece of land in the said canada of Cochiti which is composed of thirty-one varas and he sold them to the said Jaramillo for the sum of thirty-one dollars current money of the land and the said sum of thirty-one dollars the vendor acknowledges having received complete to his entire satisfaction and he was satisfied and paid and that said land is not worth more and if it is or may be worth more of the excess in value he makes grant and gift to the said purchaser pure simple perfect and irrevocable denominated the a*lw inter vivos* whereupon he renounces the laws of the *non numerata pecunia* prrof and payment, *de duos resdevendit y autentica jusonibus*, that he will not dispute nor claim it now nor at any time neither by himself nor by his wife nor his children nor any other person and if they should dispute or claim it that they may not be heard in court nor out of it and that he will protect him at his expenses until he is left in a quiet and peaceable possession of said land he sold him, and its boundaries are on the north, the river of the canada proper and on the south the hills on the east with lands of Juan Jose Aragon on the west with lands of Juan Salas, and gives power to the courts of His Magesty a*bd* particularly to those of this jurisdiction that he may with all the rigor of the law be compelled and forced to the fulfilment of this conveyance as if by a definitive sentence passed by a competent judge, sentence passed tried judged and affirmed for whose guarantee he binds and did bind his person and any real and personal property he has or may have. All of which said Armijo granted before me said alcalde mayor and witnesses of my assistance, acting as already stated in the said canada on said day month and year. The vendor did not sign because he said he did not know how to sign. I with those of my assistance signed it which I certify.

ANTONIO DE ARMENTA. [RUBRIC.]

Witnesses:

SANTIAGO LOVATO. [RUBRIC.]

ANTONIO BENITO LUCERO. [RUBRIC.]

283 PLAINTIFFS' EXHIBIT 13.

Spanish.

COCHITI EXHIBIT No. 13.

En este puesto de mi senora de la canada de Cochiti en primero de mrarso de mil ochocientos dies y seis parecieron precentes ante me Juam Antonio Baca alcalde mayor de la jurisdicion de Cochiti y sus partidos parecieron presentes Dona Antonia Rosa Logana y Don Juan Domingo Apodaca ebsinos de dicha nuestra senora de Guadalupe a quienes doy fee conosco y dijo dich- Logana que otorgaba esta escritura a favor de Juan Domingo Apodaca por costarle aversele destraviado la escritura que le otorgo su difunto esposo esa saber un pedaso de tierra en dicha Nuestra Sra. de Guadalupe que compone de ciento sesenta y nuebe y media, y son sus lineros de norte a sur lo que resa la merced real de dicho partido por el oriente con tierras del mismo comprador por el poniente con tierras de la difunta Juana Paula Romero y dicha tierra se bendio por el precio de siento sesenta y dos pesos de la tierra a lo que dise dicha Logana haber recibido a su satisfacion en que queda contenta y paga y si mas vale o vales pueda de la demacia le ase gracia y donacion pura mera perfecta yrrevocable que el derecho llama ynter vibos y que renuncia todas las leyes que puedan ablar a su favor en particular las de non numerata pecunia prueba y paga y que no le pondra pleito ni demanda aora ni en ningun otro tiempo ni por si ni por su muger yjose erederos secesores no otro persona y si acaso ubiere quien se lo ponga saldra al repara asta dejarlo en quieta y pacifica posesion de la espresada tierra y da poder a las justicias reales de su majestad especial a las de esta jurisdicion para que le compelen en todo rihor de derecho al sanamiento de esta escritura como si fuera por sentencia definitiva de jues competente con autoridad de cosa jusgada y para mayor seguro de esta venta puso por testigos a Don Jose Antonio jiron a Don Jose Lucero y para mayor sanamiento obliga su persona bienes habidos y por haber raises todo lo cual otorgo por ante mi dicho alcalde mayor y los testigos de mi asistencia con quienes autuo por receptoria a falta de escribano publico ni real que de ninguna clase lo hay en esta governacion y no lo firmo el otorgante por no saber firmelo yo dicho alcalde en dicho dia mes y ano que doy fee.

JUAN ANTONIO BACA. [RUBRIC.]

Como testigos:

JOSE MIGUEL DE LA PENA. [RUBRIC.]

Asistencia:

JUAN ESTEVAN ARAGON. [RUBRIC.]

284 PLAINTIFFS' EXHIBIT 13.

Translation.

In this place of my Lady of Guadalupe of the canada of Cochiti on the first of March, 1816, personally appeared before me Juan

Antonio Baca alcalde mayor of the jurisdiction of Cochiti and its districts, Dona Antonio Rosa Logana and Don Juan Domingo Apodaca residents of the said my Lady of Guadalupe both of whom I know and accredit, and the said Logana said that she granted this conveyance in favor of Juan Domingo Apodaca, it being evident that he has lost the conveyance given by her late husband, to wit, a piece of land in the said Our Lady of Guadalupe composed of one hundred sixty-nine and one-half varas and its boundaries are from north to south as far as the royal grant of said district and on the east with lands of the same purchaser, on the west with land of the late Paula Romero and said l-nd was sold for the price and sum of one hundred and sixty-two dollars current money of the land which said Logano declared she had received to her satisfaction and that she is pleased and paid, and that if it is or may be worth more of the excess in value she makes grant and gift pure simple perfect and irrevocable, denominated by the law *inter vivos* and that she renounces all laws that may be in her favor and particularly those of the *non numerata pecunia* proof and payment and that she will not dispute nor claim it, now nor at any other time neither by herself nor by her children heirs or successors nor any other person, and if there should be anybody else to dispute and claim it she will protect him at her expenses until he is left in a quiet and peaceable possession of said land and empowers the royal courts of His Majesty especially those of this jurisdiction that *sye* may with all the rigor of the law be compelled to the fulfilment of this conveyance as if by a definitive sentence passed by a competent judge, sentence passed tried judged and affirmed and for the best security of this sale she had as witnesses Don Jose Antonio Jiron and Don Jose Lucero and for its guarantee she binds her person and any real and personal property she has or may have all of which she granted before me said alcalde and my assistant witnesses with whom I act as judge receiver in the absence of a notary royal or public of which there is none in this province. The vendor did not sign it because she did not know how to sign. I said alcalde signed it on said day month and year which I certify.

JUAN ANTONIO BACA. [RUBRIC.]

Witnesses:

JOSE MIGUEL DE LA PENA. [RUBRIC.]
JUAN ESTEVAN ARAGON. [RUBRIC.]

285 PLAINTIFFS' EXHIBIT No. 13*a*.

En este puesto de nuestra senora de Guadalupe de la Can-da de Cochiti en primoero de marso de mil ochocientos dies y seis anos ante mi Juan Antonio Baca, alcalde mallor de la jurisdicion de Cochiti y sus partidos parescieron presentes Don Juan Ynasio Salas y Juan Domingo Apodaca besinos de dicha mi senora de Guadalupe a quienes doy fee conosco y dijo dicho que bendia y con efecto bendio a Juan Domingo Apodaca, es a saber, un pedaso de tierra en dicha canada que se compone de senta y seys varas de ancho y linda por el norte lo que resa la merced por el sur el rio correspondiente de dicha

canada el orientecon tierras de Y-nacio Lucero por el ponienete con tierras del mismo comprador y dicha tierra de bendio por el precio y candidad de quarenta y ocho pesos de la tierra a lo que dice dicho a lo que dice dicho vendedor aver recibido a su satisfacion en que queda contento y pagado y que si mas vale o valer pueda de la demasia le hase grasia y donacion pura mere perfecta yrrevocable que el derecho ll-ma ynter vivos y que renuncia todas las leyes que puedan ablar a favor en particular las de non numerata pecunia pueba y pag y que no le pondra pleito ni demanda aora ni en ningun tiempo por si su muger y hijos erederos y sucessores in otra persona y si acaso ubiere quejen se lo ponga saldra al reparo a su costa asta dejarlo en quieta y pacifica posesion de la espresada tierra y da poder a las reales justicias de su magestad especial a las desta jurisdiction para que la compelen a todo rigor de derecho al sanamiento de esta escritura como si fuera por sentencia difinitiva de jues comptente con autoridad de cosa jusgada y para mayor seguro de esta venta puso por testigos a Don Jose Antonio Jiron a Don Jose Lucero, y para mayor sanamiente obliga su persona bienes habidos y por aber raises todo lo cual otorgo por ante mi dicho alcalde y los testigos de mi asistencia con quines outo por recetoria a falta de escribano publico o real que de ninguna clase lo hay en esta governacion y no lo firme el ortorgante por no saber fermelo llo dicho alcalde en dicho dia mes y ano que doy fee.

JUAN ANTONIO BACA. [RUBRIC.]

Witnesses:

JOSE MIGUEL DE LA PENA. [RUBRIC.]
JUAN ESTEVAN ARAGON. [RUBRIC.]

286 PLAINTIFF'S EXHIBIT 13*a*.

In this place of our L-dy of Guadalupe of the can-da of Cochiti on the first day of March, 1816, personally appear before me Juan Antonio Baca alcalde mayor of the jurisdiction of Cochiti and its districts, Don Juan Ygnacio Salas and Juan Domingo Apodaca residents of my Lady of Guadalupe both of whom I know and accredit, and said Salas said that he did sell and in fact sold to Juan Domingo Apodaca, to wit, a piece of land in said canada which is composed of sixty-six varas wide and its boundaries on the north as far as the grant on the south the river of said canada on the east with lands of Ygnacio Lucero on the west with land of the same *prus*haser, and said land was sold for the price and sum of forty-eight dollars current money of the land which said vendor says he has received to his satisfaction and that he is pleased and paid and that if they are worth or may be worth more of the excess in value he makes grant and gift pure simple irrevoca-le denominated as *inter vivos* and that he renounces all laws that may be in his favor particularly those of *non numerata pecunia* proof and payment and that he will not dispute nor claim it now nor at any other time by himself his wife and children and heirs and successors, nor any other person and if they should claim or dispute it that he will protect him at his expenses until he is left in a quiet and peaceable posses-

sion of the said land and gives power to the royal courts of His Majesty and especially to those of this jurisdiction that he may with all the rigor of the law be compelled to the fulfilment of this conveyance, as if by a definitive sentence passed by a competent judge, a sentence passed tried judged and affirmed and for the best security of this sale he had two witnesses, Don Jose Antonio Jiron and Don Jose Lucero and for its guarantee binds his person, real and personal property, all of which he granted before me said alcalde, and my assistant witnesses with whom I acted as a judge receiver in the absence of a notary royal or public of which there is none in this province, and the vendor did not sign it because he did not know how to sign. I said alcalde signed it on said day month and year which I certify.

JUAN ANTONIO BACA. [RUBRIC.]

Witnesses:
JOSE MIGUEL DE LA PENA. [RUBRIC.]
JUAN ESTEVAN ARAGON. [RUBRIC.]

287 PLAINTIFFS' EXHIBIT 13*b*.

En este pueblo de San Buenaventura de Cochiti jurisdicion del mismo en siete dias del mes de Junio de mil ochocientos treinta y tres anos ante mi el ciudadano Francisco Aragon alcalde contistucional del espresado partido comparescieron presentes en sus propias personas los ciudadanos Juan Domingo Apodaca y Jose Juan Lucero ambos becinos de esta jurisdicion a quienes doy fee conosco y dijo el primero quo traspasado y en efecto traspaso toda su faculdad derecho ancion domicilio y vicinidad que le pertenecia en estas dos escrituras echas por el senor alcalde Don Juan Antonio Cabesa de Baca en el ano mil ochocientos dies y seis de las vras y linderos que sestos documentos sitan, en la persona del mencionado Jose Juan Lucero, por feria que han echo dandole apodaca mas a Lucero un sarape atilmado de lavor y de buena calidad que importa el sarape sincuenta y scai pesos de la tierra y sus corrientes y mas dise dicho Apodaca que no le pondra pleito demanda ni contradicion alguna por si mi por su mugre e hijos erederos nu sucesores y que si alguna persona se lo pusiere que no scan oidos en juicio ni fuera del y que podra gozarla con cuanto senorio le sea necesario y que tambien obliga y efrece dicho Apodaca a sacarlo a pas y salve hasta entregarle a dicho Lucero y por lo tanto ruego al senor alcalde lo haga y firme con dos testigos de asistencia para su legalizacion y yo dicho alcalde digo que lo firmo con los dos testigos de que en dicho dia mes y ano doy fee. Entregenglon junio vale.

FRANCISCO ALVINO ARAGON.

Asistencia:
VICENTE MIERA.
JUAN FRANCISCO TAFOYA.

Yo el abajo firmado albacea del findao Juan Domingo Apodaca que como tal me conceden las leyes hago entregar al ciudadano Jose Juan Lucero de 68 varas de tierra sito en la canada de Cochiti por

dependencia que el dicho finado tenia con el Sor. Lucero cuya tierra linda por el norte con tierras de Ramon Salas por el sur con lo que digan los originales de dicha tierra por el oriente con Juan Loreto Lucero y por el poniente con el mismo finado Apodaca para que el sitado Jose Juan Lucero pueda reconoser y usar como suya propia dicha tierra le doy la presente constancia hoy 12 de Julio de 1842.

FRANCISCO TOMAS BACO,
Albacea. [RUBRIC.]

288 PLAINTIFFS' EXHIBIT NO. 13*b*.

In this pueblo of San Buenaventura of Cochiti jurisdiction of the same on the 7th of June, 1833 personally appeared before me the citizen Francisco Alvino Aragon alcalde constitutional of the said district, the citizens Juan Domingo Apodaca and Jose Juan Lucero, both residents of this jurisdiction and whom I know and accredit and that first said that he did and in fact transferred, the privileg-s right share habitations and vicinity that belonged to him in these two conveyances made by the Senor Alcalde Don Juan Antonio Cabesa de Baca in the year 1816 of the lands varas and boundaries stated by these documents to the person of the mentioned Jose Juan Lucero upon an exchange they have made. Besides said Apodaca gives to said Lucero a striped blanket of good quality the value of the blanket is fifty-six dollars current money of the land. Moreover said A-odaca says that he will not dispute nor claim it neither for himself nor for his wife and children heirs and successors and that if any one should claim it or dispute it that they may not be heard in court nor out of it and that he may enjoy it with as much dominion as may be necessary and also that he binds and offers said Apodaca to protect him until said land is delivered to said Lucero and therefore he requests the senor alcalde to sign with two witnesses of assistance for its legality and said alcalde signed it with two witnesses which on said day month and year I certify.

FRANCO. ALVINO ARAGON,
Alcalde Constitutional. [RUBRIC.]

Witnesses:

VICENTE MIERA. [RUBRIC.]
JOSE FRANCISCO TAFOYA. [RUBRIC.]

I the undersigned executor of the late Juan Domingo Apodaca in exercise of my authority which as such is conceded me by the laws I cause to be delivered to the citizen Jose Juan Lucero 68 varas of land situated in the canada of Cochiti in settlement of a controversy which the said late Juan Domingo Apodaca had with the Senor Lucero, whose boundaries are on the north with lands of Ramon Salas, on the south as quoted by the originals of said land on the east with Juan Lucero and on the west with the same late Juan Domingo Apodaca and that the mentioned Jose Juan Lucero

may recognize and use said lands as his own I give him the present document today 12th of July, 1842.

FRANCISCO TOMAS BACA,
Administrator. [RUBRIC.]

289 PLAINTIFFS' EXHIBIT No. 14.

Spanish.

En este puesto de mi senora de Guadalupe de la canada de Cochiti ju-esdicion de los Queres en dos dias del mes de Julio de mil ochocientos dies y seis anos por ante mi Don Juan Antonio Cabesa de Baca alcalde mayor de dicha juresdicion parescieron presentes Don Juan Ygnacio Salas besinos amvos dos de dicha canada a quienes doy fee conosco y dijo dicho Gonzales que dendia y con efecto bendio al nominado Salas, es a saber, un pedaso de tierra de panllevan en dicha canada de cochiti que se compone de quarenta varas de ancho de oriente a poniente y de largo lo que tiene de cuya la canada cuyos lindersos son por el oriente con tierras de Javiel Lucero por el poniente con tierras del mismo comprador por el norte y sur lo que resa la merced real de dicha canada y la dicha tierra la dio en venta real el dicho Gonzales al dicho Salas por el precio y cantidad de noventa pesos de la tierra en una llunta de buelles y trece cabras paridad de cuya cantidad se da por contento y pagado y que si mas vale or baler pueda le hace gracia y donacion a Dicho Salas pura perfecta y yrrebocable que el derecho llama inter vibos sobre que renuncia las leyes de la non numerata pecunia prueba y paga las de duobus resdevebdit y autenticos perfide lusoribus las leyes de las mas comunidad que ablen sobre la mitad del justo precio y que se las da libres de senso tribucion y poteca para que las goce con libertad franca y general administracion que pueda venderlas cambiarlas y enagenarlas en la persona or personas que mas bien visto le fuere y le lede y traspasa a dicho Salas la propiedad de dicho aucion y senorio que en dichas tierras tiene sobre que no le pondra pleito ni demanda el dicho Gonzales ni por si su muger hijos herederos y sucessores, y que si acaso se lo pusieren que no sean oidos en juicio ni fuera del y que saldra a la defensa hasta dejarlo en quieta y pacifica posesion y da poder a las justicias de su magestad y en particular a las de esta jurisdicion, para que con todo rigor de derecho le compelen y apremien al cumplimiento de esta escritura como si fuera por sentencia definitiva de jues competente pasada en cosa jusgada consentida y no apelada para cuyo sanamiento obligia su persona y bienes avidos y por aber renuncia la ley antigua tha nonvala su propio fuero domicilio y vesindad la ley ciconbenerite y todas las demas que a su favor ablen todo lo cual otorgo ante me y testigos de asistencia que interpucese mi autoridad y decreto judicial y para que conste lo firme autuando como jues receptor por la notaria falta de escribano real publico que no lo hay de ninguna clase en este reyno y en papel comun por no haberlo de ningun cello de que doy

fee no firmando el otorgante porque dijo no saber firmelo yo en dicho dia mes y ano y los de mi asistencia de todo doy fee.

JUAN ANTONIO CABESA DE BACA. [RUBRIC.]

Witnesses:

LUIS MA. CABESA DE BACA. [RUBRIC.]
JUAN ARMIJO. [RUBRIC.]

Carta de venta real a favor de Juan Ygnacio Salas.

Me costa tambien aberlo bendido el mismo juan Gonzales al nominado Salas en la plasa de arriba una casa que se compone de tres cuartos con dos puertas y dos ventanas y por equboco no se mencioraron en le escrito ariba y para que conste lo firmo con un testigo de asistencia de que doy fee.

JUAN ANTONIO CABESA DE BACA. [RUBRIC.]

JUAN ESTEBAN ARAGON. [RUBRIC.]

290 PLAINTIFFS' EXHIBIT NO. 14.

Translation.

In this place of my Lady of Guadalupe of the canada of Cochiti jurisdiction of the Queres on the 12th of July, 1816, personally appeared before me Don Juan Antonio Cabesa de Baca alcalde mayor of said jurisdiction, Don Juan Ygnacio Salas and Juan Gonzales, both residents of said canada whom I know and accredit, and said Gonzales said that he did and in fact sold to the aforesaid Salas, to wit, a piece of agricultural land in said canada which is composed of forty varas wide from east to west the width of the canada whose boundaries are on the east with lands of Joviel Lucero on the west with lands of the same purchaser, on the north and south as far as the royal grant of the said canada extends and the said Gonzales gave the said lands in royal sale to the aforesaid Salas for the price and sum of ninety dollars current money of the land, in a yoke of oxen and thirteen goats with their offspring, with which sum he declared himself pleased and paid, and that if it is or may be worth more of the excess in value he makes grant and gift to the said Salas, pure, perfect, and irrevocable, denominated by the law *inter vivos*, whereupon he renounces the laws of the *non numerata pecunia*, proof and payment, those of the *duobus resdevendit y autentic a perfidia lusoribus*, the laws of *laman comunidad* which may read in his favor about the half of the lawful price, and that he gives them to him free of taxes, contribution and mortgage, that he may enjoy them with free and general control, that he may sell, exchange or transfer to the person or persons he may please, and he cedes and transfers to said Salas the property of said shares and ownership, which he had in said lands, and that he will not dispute nor claim it, the said Gonzales, neither for himself, nor his wife and children, heirs ans successors, and that if they should dispute or claim it that they may not be heard in court nor out of it, and that he would

protect him until he is left in a quiet and peaceable possession, and that he empowers the courts of His Majesty, and particularly those of this jurisdiction that with all the rigor of the law he may be compelled and forced to the fulfilment of this conveyance, as if it was by definitive sentence of a competent judge, a sentence passed, tried, judged, and affirmed, for whose guarantee he binds his person and property he has or may have, and that he renounces the old law *tha nonvala*, his own privileges, habitation and vicinity, the law *circumbenerite* and all the others that may be in his favor, all of which he granted before me and assistenat witnesses that I interposed my authority and judicial decree a*j*d in evidence of this I signed it acting as judge-receiver, in the absence of a notary royal or public of which there is none in this kingdom, and on common paper, not having any stamped which I certify.

JUAN ANTONIO CABESA DE BACA. [RUBRIC.]

Witnesses:

LUIS MA. CABESA DE BACA. [RUBRIC.]
JUAN ARMIJO. [RUBRIC.]

Bill of royal sale in favor of Juan Ygo. Salas.

In evidence also of the said Juan Gonzales having sold to the said Salas in the upper town a house composed of three rooms with two doors and two windows, which by mistake were not mentioned in the above document and that this may be valid I signed with an assistant witness, which I certify.

JUAN ANTONIO CABESA DE BACA. [RUB.]

Witness:

JUAN ESTEVAN ARAGON. [RUBRIC.]

291 PLAINTIFFS' EXHIBIT No. 15.

Spanish.

En este puesto de San Jose de las Huertas Juridicion de San Carlos de la Alameda y queres con quince dias del mes Junio de mil ochocientos dos anos parecieron ante me Don Cleto de Miera Pacheco Alcalde mayor de dicha juridicion Manuel Aragon y Jose Antonio Jiron amvor recinos de la Canada de Cochiti a quienes doy fee conosco y dijo Manuel Aragon que bendia y con efecto bendio a dicho Jose Antonio *Jose* Jiron un pedaso de tierra que tiene en la canada de Cochiti de trienta y dos varas y aora se la bendio en benta real al mensionado Jose Antonio Jiron por el precio y cantidad de treinta pesos de la tierra y sus corrientes de cuia cantidad dijo el espresado Jose *Jose* Antonio Jiron que confiesa aber recivido de manos de dicho Manuel Aragon a su entera satisfacion y se daba y se dio por satisfecho y pagado y que bo bale mas dicha tierra y que si mas baler pueda de la demacia le hace gracia y donacion al mencionada Jose Antonio Jiron pura mera perfacta irrebocable que el derecho llama intervivos sobre que renuncia todas quantes leyes le fueren a su favor para que ninguna le balga sobre que denuncia las leyes

de la non *m*umerrara pecunia prueba sobre que no le pondran plaito ni damanda alguna aora ni en ninguna tiempo ni por si ni por su muger ni por sus yjos ni por otra persona y si acaso se le puciera pleito demanda o contradicion alguna que salda al reparo a su costa hasta dejarlo en queta y oacidica posecion dela espresada tierra que la a bendido y sus linderos son de norte el Rio por el Poniente y Oriente con tierras del mismo mercador y por el sur hasta onde alcanse el sitio con entrados y salidas libres y da pondera las reales justicias de su magestad que Dios guia para que con todo vigor de derecho le compelen y opremier al complimiento de esta escritura como si fuera por sentencia difintiva por pues competente pasada con autoridad de casa jusgad para cuyo sanamiento obliga y obligo su persona bienes rayses y mueblas habidos y por haber todo lo que otorga por ante mi dicho alcalde mayor y testigos de asistencia con quienes autuo a falta de escribano real que no lo ay en toda esta provencia y la en papel comun por no haber sellado ni firmo el otorgante saber firmarlo yo con los de mi asisstencia en el espresado puesto en dicho dia mes y ano de que doy fe.

CLETO MIERA PACHECO.
JOSE MARIANO BARELA.

Testigo:
LORENSO GARCIA.

292 PLAINTIFFS' EXHIBIT NO. 15.

Translation.

In this place of San Jose de las Huertas jurisdiction of San Carlos of the Queres and Alameda on the 15th day of June of 1802 personally appeared before me Don Cleto de Miera y Pacheco, alcalde mayor of said jurisdiction Manuel Aragon and Jose Antonio Jiron both residents of the canada of Cochiti and whom I know and accredit, and Manuel Aragon said that he did sell and in fact sold to said Jose Antonio Jiron a piece of land he has in the canada of Cochiti of thirty-two varas and now he sold it in royal sale to the said Antonio Jose Jiron for the price and sum of thirty dollars current money of the land, which said the sum the aforesaid Jose Antonio Jiron acknowledges having received from the hands of Manuel Aragon to his entire satisfaction and he was and is satisfied and paid and that s*q*id land is not worth more, and that if it may be worth more of the excess in value he made grant and gift to the said Jose Antonio Jiron, pure, simple, perfect and irrevocable, which the law denominates *inter vivos*, whereupon he renounces all laws which may be in his favor that none may avail him, whereupon he renounces the laws of the *non numerara pecunia*, and that he will not dispute nor claim it neither now nor at an*t* other time, neither for himself nor his wife, nor his children nor any other person, and if they should dispute or claim it, or make any opposition that he will protect him at his own expense until he is left in a quiet and peacef*i*l possession of the said land which he sold him, and its boundaries are on the north the river, and on the

west and east with lands of the same purchaser, and on the south as far as it reaches the common lands with entrance and outlet free and gives power to the royal courts which God guides that they may with all rigor of justice compel and oblige him to the fulfilment of this deed as if it were by definitive sentence passed by a competent judge, tried judged and affirmed for whose guarantee he binds and did bind his person and any personal or real property he has or may have, all of which he granted before me, said alcalde, and the witnesess of my assistance, with whom I act as treasurer for want of a notary royal or public of which there is none in this province and on common paper not having any stamped. The grantor did not sign. He said he was not able to sign. I with those of my assistance signed it in said place, in said day, month and year tom which I certify.

CLETO MIERA PACHECO.

Testigos:
JOSE MA. BARELA.
LORCUSE GARCIA.

293 PLAINTIFFS' EXHIBIT *Exhibit* No. 16.

Spanish.

En este puesto de la canada de Cochiti en primero de Marzo de mil ochocientos dies y sais aparesieron aparecieron precentes ante mi Juan Antonio Baca Alcalde mayor de la jurisdicion de Cochiti y sus partidos parecieron presentes Don Juan Ygnacio Sala y Don Jose Lucero residentes de dicha canada aquienes doi fe conosco y dijo dicho sala que bendia y con efecto bendio a Jose Lucero es a saber un pedaso de tierra en dicha canada que se compone de nobenta y dos varas que son sus linderos por el norte a lo que resa la merced por el sur el rio biejo por el Oriente con tierras de Manuel Montoya por el sur con tierras de Franco. Lucero y dicho tierra se bendio por el precio y cantidad de ochenta pesos de la tierra a le que dice dicho bendedor aber resibido a su satisfacion en que queda contento y pagado y que si mas bale o baler puede de la demacia le hace gracia y donacion pura mera perfecta irrebocable que el decreto llama inter vivos que renuncia todas las leyes que puedan ablor a favor en particular las de la numerara pecunia prueba y paga y que no le pondra pleito ni demanda aora'ni en ningun tiempo por si su muger hijos erederos y susesores nio otra persona y si acaso ubiero quien se lo ponga saldra al reparo a su costa asta dejarle en quieta y pasifica posesion de la espresada tierra y da poder a la reales justicias de su magestad especial a las de esta jurisdicion para que le compelen a todo rigor de derecho al sanacumento de esta escritura como si fuera por sentencia definitiva de jues comoetente con antoridad para mayor seguro de esta benta puso por testigos a Don Jose Antonio Giron y a Don Juan Domingo Apodaca y para mayor sanacumento obliga su persona bienes abidos y por aber rayses todo lo cual otorga por ante mi dicho alcalde y los testigos de mi asistencia conquienes autuo por a falta de escribano publico mi

294 rial quede ninguna clase lo hay enesta governacion no lo firmo el otorgante por no saber firmelo llo alcalde en dicho dia mes ano que doy fe.

JUAN ANTONIO BACA. [R.]

Como testigo:
JOSÉ MIGL. DE LA PEÑA. [R.]
JEMENTÉ PACHECO. [R.]
Asistencia:
JUAN ESTEVAN ARAGON. [R.]

295 PLAINTIFFS' EXHIBIT NO. 16.

Translation.

In this place of the canada of Cochiti on the first day of the month of March, 1816, personally appeared before me Juan An-onio Baca, alcalde mayor of the jurisdiction of Cochiti and its districts, Don Juan Ygnacio Sala and Don Jose Lucero, residents of said canada, both of whom I know and accredit, and said the aforesaid Sala that he did sell and in fact sold to Jose Lucero the following: A piece of land in said canada that is composed of ninety-two varas whose boundaries are on the north as far as the grant, on the south the old river, on the east with lands of Manuel Montoya and on the south with lands of Franco. Lucero, and said land was sold for the price and sum of eighty dollars current money of the land, which said vendor said he had receibed to his entire satisfaction, for which consideration he declared himself to be pleased and paid, and that if it is worth more or may be worth more of the excess in value he made grant and gift pure simple perfect and irrevocable which the law denominates *inter vivos* and that he renounces the laws of the *numerara pecunia*, proof and payment, and that he will not dispute nor claim it now nor at any time, for himself, his wife, children, heirs and successors nor any other person and if they should dispute or claim it he will protect him at his own expense until he is left in a quiet and peaceful possession of said land and gives power to His Majesty's courts especially to those of this jurisdiction that they may with all the rigor of the law compel him to the fulfilment of this deed as if it had been by a definitive judgment of a competent judge, tried judges and affirmed, for greater security of this sale he has as witnesses Don Jose Anton Giron and Don Juan Domingo Apodaca and for better guarantee he binds himself and any real property he has or may have, all of which he granted before me said alcalde and the witnesses of my assistance with whom I act as treasurer for want of royal notary or notary public, of which there is none of any kind in this province; the grantor did not sign it not knowing how to sign it. I said alcalde signed it in said day month and year, which I certify.

JUAN ANTONIO BACA.

As witnesses:
JOSE MIGUEL DE LA PENA.
JEMENTÉ PACHECO.
Assistance:
JUAN ESTEVAN ARAGON.

296 PLAINTIFFS' EXHIBIT No. 17.

Spanish.

En este puesto de muestra Senora de Guadalupe de la Pena Blanca en catorce dias del mes de Julio de este presente ano de mil ochocientos veinte por poder juridico que dio Maria Beatris Lucero a Don Jose Antonio Ulibarri se padre politico par que otargara la escritura real de un pedaso de tierra que con su boluntad bendio y el como testigo paresieron presentes por ante mi Don Juan Antonio Cavesa de Baca Alcalde mayor de esta jurisdicion Don Jose Antonio Ulibarri vecino de San Jose del Bado y Don Loreto Lucero vecino de la Canada de Cochiti a quienes doy fe conosco y dijo dicho Ulivarri que bendia y en efecto bendio a dicho Lucero un pedaso de tierra que esta en dicha canada de pan lleban que se compone de conquenta varas de ancho y son sus linderos por el poniente con tierras del mismo comprador por el oriente con el mismo por el Sur con el Rio y por el norte lo que resa la merced real de dicha canada y le dio por la mencionada tierra dicho Lucero cincuenta pesos del corriente de la tierra los que confiesa ulibarri aber recibido a su contento y satisfacion y que si mas bale o baler pueda de la demacia le ase gracia y donacion pura mera irrebocable sobre que renuncia todas cuantes lelles que a su fabor ablen asegurando el sanemiento de esta escritura con su persona bienes muebles y raises abidos y por aber y que no le pondran plito ni demand ni por sus hijos ni por susesores ni erederos y si acaso se la pusieron se obliga a defender a su costa y mencion asta dejar a dicho Lucero en quieta y pacifica posecion y suplica a las reales justicias de su majestad que si por si o sus hejos o herederos quisiean perturbar esta benta real y verdedera no sean oidos en jucio ni fuera de el y por todo lo cual me suplicaron anbos dos interpusiera mi antorida y decrecto judicial y yo dicho alcalde dixe que la interponia e interpuse cuanta
297 por derecho me es conferido autuando por con los testigos de mi asistencia con quiermes autuo a falta de escribano real ni publico que de ninguna clase lo ay en esta provencia y en papel comun por no aber del sellado en la presente ocacion firmandolo conmigo el otorgante y los de mi asistencia en dicho dia mes y ano de que doy fee.

JOSE ANTONIO ULIBARRI.

JUAN ANTONIO CAVESA DE BACA, *Jues Real.*

Asistencia:

MIGL. MONTOYA.

Asistencia:

LUIS MA. CABESA DE BACA.

298 PLAINTIFFS' EXHIBIT No. 17.

Translation.

In this place of our Lady of Guadalupe of Pena Blanca on the 14th day of the month of July of this present year of 1820 by legal power

given by Ma. Beatris Lucero to Don Jose Antonio Ulavarri, her father-in-law, that he may grant the royal deed of a piece of land that she sold with her own free will, and he, as witness, appeared before me, Don Juan Antonio Cabesa de Baca, alcalde mayor of this jurisdic--ion, Don Jose Antonio Ulivarri, resident of Sam Miguel del Bado and Don Loreto Lucero, resident of the canada of Cochiti, both of whom I know and accredit and the aforesaid Ulivarri said that he was selling and in fact sold to the said Lucero a piece of agricultural land that is situated in said canada and is composed of fifty varas in width, and its boundaries are on the west with lands *with lands* of the same purchaser, on the east with the same, on the south as far as the river, and on the north as far as the royal grant of said canada, and for the said land the said Lucero gave fifty dollars current money of the land which said Ulivarri acknowledges having received to his entire pleasure and satisfaction, and that if it is worth or may be worth more, of the excess in value he makes grant and gift pure simple and irrevocable, whereupon he renounces all laws that may be in his favor to assure the guarantee of this deed binds his person and any real or personal property that he has or may have, and that he will not dispute nor claim it, neither for himself nor his children, successors, nor heirs, and if they should dispute or claim it he binds himself to protect him at his own cost, oral or written, until he is left in a quiet and peaceable possession, and requests the royal justices of His Majesty, and if himself or children or heirs want to dispute this royal sale or try to dispute or sell it that they may not be heard in court nor out of it, and for all of which both of them asked me to exercise my authority and judicial decree, and I said alcalde said that I would exercise and did exercise it, which by right is conferred upon me, acting with the witnesses of my assistance, with whom I act for want of a notary public or royal, of which the- is not one in this province, and on common paper not having any stamped paper at the present time sig-ing it with the grantor and those of my assistance in said day month and year, to which I certify.

JUAN ANTONIO CABESA DE BACA, *Alcalde.*

JOSE ANTONIO ULIVARRI.

Assistencia: MIGL. MONTOYA.
Asta.: LUIS MA. CAVESA DE BACA.

299 COCHITI EXHIBIT No. 18.

Spanish.

En este Pueblo de San Buenaventura de Cochiti Jurisdicion de los Queres en veinte y tres dias del mes de Dibre de mil ochocientos veinte y tres años ante mi el ciudadano Vicente Tafolla Alcalde Constitucional de dha jurisdicion autuando como Presidente con dos testigos y el Srto. de Cabildo, parecieron presentes Juan Ygno. Atencio y Anto. Lucero ambos vecinos de la Cañada de Cochiti a quienes doy fee conosco: y dixo el expresado Juan Ygno. Antencio

que vendia y en efecto vendio al nominado Antonio Lucero esa saver: un pedaso de tierra que tenia en la dha Cañada de Cochiti qe se compone de trecientas treinta y dos varas castellanas, y que son sus linderos por el norte y sur hasta onde resa la merced Real, y por el oriente con el arroyode las Piedras y por el Poniente con tierras de los maeses; dha tira se la vendio por el precio y cantidad de ciento treinta y un peso al corriente de la tierra que de suya cantidad quedo dho Juan Ygnacio Atencio pagado contento y satisfecho y que no vale mas dha tierra, y si mas vale o valer pueda de la demasia le ase gracia y donacion al dho Anto. Lucero, pura mera perfecta ē irrevocable que el derecho llama inter vivos sobre que renuncia las leyes de la non numerata pecunia prueba y paga las, de duobus res devendi, y autentica perfide sobre que no le pondran pleito ni demanda alguna ahora ni en ningun tiempo ni por si mismo ni por su muger, ni por sus hijos, ni por ninguna otra persona; y si acaso se le le pusiere pleito demanda o contradicion alguna que saldra a la defensa a su costa hasta dejarlo en quieta y pacifica posesion de la expresada tierra qe le ha vendido; y da poder dho vendedor a las justicias de S. M. y en particular a las de esta jurisdicion, para que por todo rigor de derecho le compelen y a premien al cumplimiento de esta escritura como si fuera por sentencia difinitiva de juez comp'ente, pasada con autoridad de cosa jusgada consensida y no apelada; para cuyo sanamiento obliga y obligo su persona bienes raises y muebles, abidos y por haber; todo loqual ortorgo dho vendedor ante mi dho Alcalde Constitucional y testigos de asistencia con quienes autuo por reseptoria, y no firmo el ortorgante parque dixo no saber firmelo dho alcalde con el infrascripta Srto. de Cabildo y los de mi asistencia en el expresado Pueblo en dho mes y año que de todo doy fee.

VICENTE TAFOLLA, *Presidte.* [R.]
ESTEVAN ARAGON, *Srio.* [R.]

Asta: SEBASTIAN SALAS. [R.]

COCHITI EXHIBIT NO. 18.

Translation.

In this town of San Buenaventura de Cochita jurisdiction of the Queres on the twenty-third day of the month of December in the year one thousand eight hundred and twenty-three before me the citizen Vicente Tafolla constitutional alcalde of said jurisdiction acting as president with two witnesses and the secretary of Cabildo, appeared present Juano Igno. Atencio and Anto. Lucero both residents of the cañada of Cochiti whom I certify I know; and the said Juan Igno. Antencio declared that he was about to sell and actually sold to the said Antonio Lucero, to wit, a parcel of land that he had in the said cañada of Cochiti which is composed of three hundred and thirty-two Castillian varas, and that its boundaries are on the north and south as far as the royal grant extends, and on the east

the Arroyo de las Piedras, and on the west lands of the Maeses; said land was sold for the price and sum of one hundred and thirty-one dollars current money of the land; with which sum the said Juan Ignacio Atencio was paid, contented and satisfied, and (declared) that said land was not worth more, and, if — was or could be worth more, he makes of the overplus a favor and gift to the said Anto. Lucero, pure, simple, perfect, and irrevocable, which the law styles *intér vivós;* whereupon he renounces the laws of *non numerata pecunia*, proof and payment, that of *duobus res devendi* and *autentica perfide*, in respect of which no suit or demand whatsoever shall be set up now or at any time hereafter, neither by himself nor his wife, nor his children, nor by any other person; and if it should happen that any suit, demand or adverse claim whatsoever should arise he shall defend the same at his own costs until he shall leave him in the quiet and peaceable possession of the said land which he has sold to him; and the
302 said vendor gives power to the justices of S. M. (His Majesty) and in particular to those of this jurisdiction in order that with all the right of the law they may force and compel due compliance with this instrument as if it were the definitive judgment of a competent judge, passed with authority upon subject-matter tried and determined, consented to and not appealed; to which indemnity he binds and has bound his person, his real estate and his personal property, held and to be held; all which said vendor executed before me said constitutional alcalde and attending witnesses with whom I act, under commission; and the grantor did not sign because he said he did not know how; I said alcalde signed it with the undersigned secretary of Cabildo and those attending me in the said town in said month and year. And to all I certify.

VICENTE TAFOLLA, *President.* [R.]
ESTEVAN ARAGON, *Secretary.* [R.]

Attending:
SEBASTIAN SALAS. [R.]

303 PLAINTIFFS' EXHIBIT No. 19.

Spanish.

En este puesto de Nuestra Sra. de Guadalupe de la Pena Blanca jurisdicion de San Buenaventura de Cochiti de veinte y nueve de Mayo de mil ochocientos veinte y nueve ante mi Don Miguel Cabesa de Baca alcalde constitucional de dicha canada jurisdicion y sus partidos comparecieron presentes Jose Montano y Jose de la Cruz Jiron quienes doy fe conosco ambor vecinos de la canada de Cochiti y dijo el primero que bendia y con efecto bendio Jose de la Cruz Jiron un pedazo de tierra que se compone de cuarenta varas de ancho y de largo de norte a sur hasta onde resa la merced real de esta canada y son son sus linderos por el oriente con las tierras de Teodora Romera y por el poniente con tierras de Jose Bernal y por el norte como llebo dicho asta honde resa la merced real y dicha tierra se la bendio el mencionado Montano y Jose de la Cruz Jiron

por el precio y cantidad de diez pesos fuertes y quatro reales en los que confiesa dicha Montano haber recidido a su satisfacion y contento y dijo que si mas balia o baler pueda la dicha tierra le hace gracia de la demacia pura mera yrrebocable que el derecho llama inter vivos y que se las de libes de senso tributo ypoteca u otra enegenacion como que traspasa en el todo sy derecho senorio domicilio y vecinidad uso y cotumbres asi como lo tenia para que pueda dicho comprador husar con toda libertad dicha tierra en la manera que sea su voluntad sin que para ello haiga quien se lo impida ni por si e hijos niestos erederos o susesores y que su acaso se lo pusieron suplica a las justicias nacionales que no sean oidos en juicio ni fuera de el en cuya defensa se obliga dicho Montano con su persona ababidos raises muebles abidor y por haber hasta ponerlo en quietud y pacifica posecion sobre que sobre que renuncia todas quantes leyes que a su favor liaiga tocanto a bentos de esta calidad para lo cual se somete Itras justicias nacionales a que lo compelen al sanacemento de esta escritura y que si acaso le lefaltore alguna sircustancias o requisitos las da por espresadas como si fuera por sentencia difinitiva de jues copetente consentida y ne apelada y para que esta escritura de benta real tengo mayor fuerza y balidacion me suplico dicho vendedor interpusiera mi autoridad y judicial u decreto y yo dicho alcalde constitusional dije lo interponia y lo interpuse quanto por derecho me es conferida actuando con los testigos de mi asistencia conquienes actue y firmandola con migo dicho vendedor a falta de escribano real ni publico que de ninguna clase lo hay en este governacion y firmandola en dicho puesto dia mes y ano de que doy fe.

JOSE MIGUEL CABESA DE BACA.
JOSE PABLO GARCIA.

ANTONIO VELASQUES.
JOSE MONTANO.

304 PLAINTIFFS' EXHIBIT 19.

Translation.

In this place of Nuestra Sra. de Guadalupe of Pena Blanca jurisdicion of San Buenaventura of Cochiti in the 29th day of May 1829 before me Don Miguel Cavesa de Baca alcalde constitutional of said jurisdie-ion and its districts personal-y appeared Jose Montano and Jose de la Cruz Jiron both of whom I know and accredit both residents of la canada of Cochiti and the first said that he did sell and in fact sold to Jose de la Cruz Jiron a piece of land which is composed of forty varas wide and long from north to south as far as the royal grant of said canada and its boundaries are on the east with lands of Teodora Romero and on the west with lands of Jose Bernal and on the north as above said as far as the royal grant and said land was sold by the said Montano to Jose de la Cruz Jiron for the price and sum of ten and half dollars silver which said Montano acknowledges having received to his entire satisfaction pleasure, and said that if it is or may be worth more the said land of the

excess in value be made grant and gift pure simple irrebocable which the law d-ominates *inter vivos* and that he gives it to him free of all taxes tribut- and mortgage or any other encumbrance as he transfere- to him all his rights control habitation and vicinity custom and habits just as I had it that said purchaser may use said land with all freedom as he it may suit his pleasure that there may not be a person to restrain neather him children grandchildren heirs or successors and if they should restrain him he requestes the national courts that they may not be heard neather in court or out of it on whose defence he binds his person real and personal property he now has or may have until he is left in a quiet and peaceful possession whereupon he renaunces all laws about seles of this kind that *they* may be in his favor for which he submits to our national courts that they may be compel-ed to the fulfilment of this deed and if any incident requisite is wanting he agrees to consider them as if expressed as if it was definitive sentance by a competent judge tried judged and affirmed and that this royal bill of sale may have more power and validity said vendor requested me to usse my judicial authority and I said constitutional alcalde *alcalde* said I would usse it and did usse it which by right is confer-ed upon me acting with the witnesses of my assistance with whom I acted and signing with me said vendor for want of royal or public notary which there are none in the provence and signing it in said place day month and year of which I certify.

JOSE MIGUEL CABESA DE BACA.
JOSE PABLO GARCIA.

ANTONIO VELASQUES.
JOSE MONTANO x.

305 PLAINTIFFS' EXHIBIT *Exhibit* No. 20.

Copia.

En este puesto de Nstra. Guadalupe de la Pena Blanco Jurisdicion de San Buenaventura de Cochiti a los ocho dias del mes Septiembre de mil ochocientos beinte y muebe anos por ante me Don Jose Miguel Baca Alcalde Constitucional, comparecieron presentes por sos propi as personas los ciudadano Sabastian Salas y Don Jose Antonio Jiron a quienes doy fee conosco y dijo el primero que bendia y con efecto bendio al segundo una cas de terrado que se compone de cuatro piesas con unas docientes varas de tierra en la Canada de Cochiti por el precio y cantidad de tresientos pesos correntes de la tierra con lo que quedo satisfecho y conforme y son sus linderos por el norte asta onde resa la merced real por el sur esta el Rio por el poniente con tierras de Dona Josefa Lucero las dosientas baras de tierra estan separadas unas de otra ciento lindan con los linderos sitados y las otras siento lindan por el norte esta onde resa la merced real y por por el sur con tierras Antonio Aora Lujan por el oriente con tierras del defunto Patricio Salas y por el poniente con tierras de la mencionada Lucero y dijo Salas que si

mas bale o baler pueda la dicha tierra de la demacia le hace gracia y donacion pura mera perfecta ynrrecobale y que las da libres de todo senso ypoteca y para que pueda benderlas aquien sea su bolundad como propia sulla que son y que las gose por si sus hijos erederos y susesores sin que para ello le sea puesto pleito ni enbaraso alguno por el susodicho Salas ni hijos ni erederos y que si acaso se lo pusiere no sean oidor en juicio ni fuera de el y que si acso se lo pusieren obliga su persona al sanaimento de dicha tierra como si fuera por sentencia difinitiva consentida y no apelada dada por jues competente y por todo lo cual me suplicaron ambos
306 otorgantes ynterpusiera mi antoridad y decreto judicil u llo mencionado Alcalde dije que lo ynterponia y lo ynterpuse quanto por derecho me es conferido firmado conmigo los testigos de asistencia de que doy fee.

JOSE MIGUEL CABEZA DE BACA.

Ass.: JOSE ANTONIO CABEZA DE BACA.
Ass.: JUAN TOMAS BACA.

307 PLAINTIFFS' EXHIBIT No. 20.

Translation.

In this place of Ntra. of Guadalupe of the Pena Blanca *h*urisdiction of San Buenaventura of Cochiti on the eighth day of September 1829, personally appeared before me Don Jose Miguel Baca constitutional alcalde the citizens Sebastian Salas and Don Jose Antonio Jiron both of whom I know and accredit and the first said that he did sell and in fact sold to the second a house with a terrace and is composed of four rooms with some two hundred baras of land in the canada of Cochiti for the price and sum of three hundred dollars current money of the land with which consideration he declared to be suited and satisfied and it- boundaries are on the north as far a- the royal grant on the south as far as the river on the west with lands of the heirs on the east with lands of Dona Josefa Lucero, the two hundred varas of land are divided into hundred varas apiece and the boundaries are for one of the pieces those above mentioned and the other piece its boundaries are on the north as far as the royal grant and on the south with lands of Antonio Aosa Lujan on the east with lands of the said Lucero and Salas said that if it is worth or may be worth more than the said land of the excess in value he made grant and gift pure simple perfect and irre*bo*cable and that he gives them free of all taxes and mortgages that he may sell or exchange them to whom he may please as his own which they are and that he may enjoy them himself his children heirs and successors that they will not desput- nor obstruct it for the said Salas nor his children nor heirs and if the- should desput- it that they may not be heard in court nor out of it and should they desput- it he binds his — to guarantize said land as if it was a sentence passed tried judged and affirmed and not appealed and for all of which both grantors requested me to exercise my *o*uthority and

judicial decree and I said alcalde said I would and did exercise it which by right is confer-ed upon me signing with me the witnesses of as-istance of which I certify.

JOSE MIGUEL CABESA DE BACA.

Ass.: JOSE ANTONIO CABESA DE BACA.
Ass.: JUAN TOMAS BACA.

308 PLAINTIFFS' EX. NO. 21.

Spanish.

En la Pena Blanca alos veinte y cinco dias del mes de Deciembre en este año de mil ochocientos veinte y nuebe años ante mi Don Miguel Baca alcalde constitucional a esta de Cochiti y sus anexos comparecieron ante me los ciudadanos Jose Bernal y Jose Lucero vecinos de la cañada de Cochiti aquienes doy fé y conosco y dijo el Primero que bendia y con efecto bendio al segundo en la mencionada cañada es a saber quince varos de tierra de pan llvor por el presio y cantidad de diez manojos de punche y cuatro cabros con leche las que Confiesa Bernal haber recibido a su satisfacion y contento, y son sus Linderos al oriente con tierras de Jose de la Cruz Xiron al Poniente con del mismo comprador, Sur el Rio y al norte donde resa la merced, y dise que si mas bale o baler pueda le hace gracia y donacion pura mera perfecta que el decreto llama inter vivos, cediendo y traspasando en dicho Jose Lucero su propio fuero domicilio y vicindad para que las goze el sus hijos herederos subsesores y que no le pondra plaito demanda ni contradicion alguna antes si se obliga con su persona biens y raises a sacarlo a pas y solbo hasta ponerto en su propia posecion y rogamos al Sor alcalde constitucional pusiera su autoridad y firmara esta escritura bajo testigos de asistencia y yo dicho alcalde la firme con los dos mencionados en dicho dia mes y año que di fee.

JOSE MIGUEL BACA.

JUAN GIRON ARAGON.
JUAN JOSE ——.

[Endorsed:] Cochiti Ex. 21. Conveyance.

309 COCHITI EXHIBIT NO. 21.

In Pena Blanca on the 25th day of December of this year 1829 personally appeared before me Don Miguel Baca constitutional alcalde of this (jurisdiction) of Cochiti and its annex, the citizens Jose Bernal and Jose Lucero, residents of the canada of Cochiti, both of whom I know and accredit, and the first said that he did sell and in fact sold to the latter in the said canada the following: Fifteen varas of agricultural land for the price and sum of ten bunches of tobacco and four milch goats, which Bernal acknowledges having received to his pleasure and satisfaction and its boundaries are on the east with lands of Jose de la Cruz Xiron and on

the west with lands of the same purchaser, on the south the river and on the north as far as the grant, and says that if it is or may be worth more of the excess he made grant and gift pure perfect simple and irrevocable which the law de*mo*minates *inter vivos*, ceding and transfer-ing to the said Jose Lucero his own privileges habitation and vicinity, that he may enjoy them his children heirs and successors and that he will not dispute claim nor obstruct it; and instead he binds his own person and any real property to protect him until he is left in its possession and we request the constitutional alcalde to exercise his authority and sign this deed with witnesses of assistance, and I said alcalde signed it with the two aforesaid witnesses on said day month and year which I certify.

JOSE MIGUEL BACA.

JUAN GERVO. ARAGON.
JUAN JOSE DE ARSE.

310 PLAINTIFFS' EXHIBIT NO. 22.

Spanish.

En este puesto de Nuestra Señora de Guadalupe de la Peña Blanca Jurisdicion de San Buenaventura de Cochiti en dies y nuebe dias del mes de Abril de mil Ochocientos treinta y uno por ante mi Ciudadano Juan Antonio Cabesa de Baca Alcalde Constitucional de la mencionada Jurisdicion Aparecieron presentes en sus propias personas los ciudadanos Téodora Romero residente en Bernalio y Jose de la Cruz Jiron vecino de ésta Jurisdicion á quienes doy fé conosco dijo la primera que bendia y con efeco bendio al segundo un pedaso de tierra de pan llevor en el pasojede Nuestra Señora de Guadalupe de la Cañada de Cochiti Cuya tierra la hubo la mencionada Romero de erensia de su difunta madre Rosa Montoya y se Compone por la banda del norte de sincuenta varas de Acho y de largo le que resa la merced de dicho puesto y son sus linderos por el poniente linda con tierras del misno Comprador el Oriente con tierras del C. Antonio Aragon y por la banda del sur son doscientos setenta y Ocho sus linderos por el poniente con tierras del C. Manuel Gallegos por el Oriente Oriente con tierras del mencionado Aragon por el sur lo que resa la merced de dicho puesto cullas tierras se las dio en benta real la predicha Romero a Jiron por el precio y cantidad de cuarenta pesos corrientes de la tierra con le que dice la es-

preseda Romero quedo contenta y Satisfecha y que simas
311 bale or bales pueda de la le hace gracia y donacion pura mera perfecta ynrrevocable y que ne se le pondra pleito ni enbaraso en ningun tiempo por si hijos herederos ni susesores y que sé acaso se lo pusiere obliga su persona a sanamiento de dichas tierras asta ponerlas en quieta y pasifica posecion por todo lo cual suplicamos ambos otorgantes al Sr. Alcalde Constitucional de esta Jurisdicion pusiera toda su antoridad y decreto Judicial y llo el dicho Alcalde dije la interponia y la interpuse quante por derecho me es conferido antecando con los testigos de mi asistencia a falta de escribano publico que de ninguna clase lo hay en este territorio

firmando conmigo los otorgantes con una Señal de Cruz, por no saber mas de que doy fé.

JUAN ANTONIO CAVESA DE BACA.

JOSE DE LA CRUZ JIRON.
FRANCO. TOMAS CAVEZA DE BACA.
TEODORA ROMERO.

312 PLAINTIFFS' EXHIBIT No. 22.

Translation.

In this place of our Lady of Guadalupe of Pena Bqlnca, jurisdiction of San Buenaventura of Cochiti on the 19th day of the month of April of 1831, personally appeared before me citizen Juan Antonio Cabesa de Baca constituti-nal alcalde of the said jurisdiction, the citizens Teodora Romero, resident of Bernalio, and Jose de la Cruz Jiron, resident of this jurisdiction, both of whom I know and accredit, and the first said that she did sell and in fact sold to the second a piece of agricultural land in the pass of our Lady of Guadalupe of the Canada of Cochiti, which land the said Romero received as inheritance from her late mother Rosa Montolla and it is composed on the north side of fifty varas in width, and in length as far as the grant of said place and its boundaries are on the west with lands of the same purchaser, on the east with lands of the citizen Antonio Aragon and on the south side is two hundred and seventy-eight "varas wide" its boundaries are on the west with lands of Manuel Gallegos, on the east with lands of the said Aragon, on the south as far as the grant of said place, which lands she gave him in royal sale, the aforesaid Romero to Jiron, for the price and sum of forty dollars current money of the land, with which consideration said Romero declared herself to be pleased and satisfied and if it is or may be worth more of the excess in value she made him grant and gift pure simple perfect and irrevocable and that she will not dispute nor obstruct it at *ajt* time neither for herself, children, heirs nor successors, and if any one should dispute it she binds her person to guarantee said lands until left in a quiet and peaceful possession for all of which both of us grantors request the said alcalde constitutional to exercise his authority and judicial power, and I the said alcalde said that I would exercise it, and I did exercise it, all of which is conferred upon me by law, acting with the witnesses of my assistance, for want of a notary public of which there is none in this Territory, signing with me, the grantors, with a cross-mark, being unable to sign to which I certify.

JUAN ANTONIO CABESA DE BACA.

FRANCISCO TOMAS CABEZA DE BACA.
JOSE DE LA CRUZ JIRON.
TEODORA ROMERO.

313 PLAINTIFFS' EXHIBIT No. 23.

Spanish.

En este Pueblo de San Buenaventura de Cochiti Jurisdicion del mismo a los dias veinte y Ocho dias de Septiembre de mil Ochocientos treinta y tres anos comparecieron Ante mi Maria Beatriz Lucero residente de San Jose de Bado y Miguel Lucero vecino de la Cañad de Cochiti a quienes doy fee Conosco, y dijo el la primera que vendio y con éfecto vendio al segundo es a s-ber un pedaso de tierra pan llebor que tenia en dicha Cañada de Cochiti que la hubo por herencia de su finado padre que dicho pedaso de tierra se compone de Oriente á poniente de sinquenta varas y sus linderos son por el norte asta onde resa la merced por el sur asta el rio Bajo de dicha canada por el oriente con tierras de Jose Liandro Lucero por el poniente con tierras del mismo comprador y dicha tierra la bendio la espresada Beatris Lucero a mensionado Miguel Lucero por el precio y cantidad de Beinte y cuatro pesos y medio pesos fuertes de plata que de culla cantidad quedo dicha Beatriz Lucero Contenta Pagada y Satisfecha y dise que no bale mas dicha tierra y que si mas bale o baler pueda de la demasia de le hase gracia y donacion de ella al dicho Miguel Lucero pura miesa perfecta é inrrebocable que el derecho llama inter vivos que renunsia todas y cuantas lelles a su favor ablen que no le pondra pleyto ni demanda alguna ni aora ni en ningun tiempo, ni por si ni por sus hijos ni por ninguna otra persona y si acaso se le pusiere pleyto demanda o contradission alguna que saldra a la defensa a su costa asta dejarlo en
314 quieta y pasifica pozecion de la espresada tierra que le a bendido y do poder dicha bendedora a las justisias nacionales a todas y cada una honde este documento se manifieste y en particular a las de esta jurisdision para que por todo rigor de derecho le compelen y apremien al complimento de esta escritura como si fuera por sentensia difinitiva de jues competente pasod con autoridad de cosa jusgada consentida y no apelada para cullo sanamiente obliga y obligo su persona Bienes raises y muebles, abidos y por haber todo lo cual otrgó dicho Bendedora ante mi el Ciudadano Franco. Albino Aragon Alcalde Constitusional de dicho jurisdision y testigos de asistensia con quienes atuo a falta de escribano publico que ne lo hay en este territorio y ne firmo la otorgante por que dijo no saber firmarla llo dicho Alcalde con los testigos de asistensia en el espresado pueblo en dicho dia mes y año de que doy fee.

According rigor.

FRANCO. ALBINO ARAGON.

As-tensia:
MARIANO JOSE SANCHEZ.
Asistensia:
JOSE GALLEGO.

TERRITORIO DE N. M., }
Condado de Dona Ana. }

Hoy 27 de Marzo de mil Ochocientos cincuenta y cinco p-rsonalmente fueron presentes ante mi Albino Aragon uno de los jueses de pas en y por el Condado de Doña Ana Miguel Lucero y Manuel Lucero a quienes doy fee consio y dijo el primero que traspasoba y con efecto traspaso en el segundo todo su derecho aucion Señorio Domisilio y vecindad por el precio y cantidad de veinte y siete pesos fuertes y medio con culla cantidad dijo el espresado Miguel Lucero quedaba pagado contento conforme y satisfecho
315 y dyo mas que no le pondra pleito demanda in contradision alguna haora ni en ningun tiempo, ni possini pos su mijes ni hijos Erederos ni sucesores y que si acaso se le pusiere que saldra a la defensa a su consta hasta dejarlo en quieta san y pasifica posesion del terreno que esplica el anterior documento asi lo paltaron ante mi dicho Jues en dicho dia mes y año a que me refiero y doy fee.

ALBINO ARAGON,
Juez de Paz.

316 PLAINTIFFS' EXHIBIT NO. 23.

Translation.

In this place of San Buenaventura of Cochiti, jurisdiction of the same, on the 28th day of September of the year 1833 personally appeared before *em* Maria Beatriz Lucero, resident of San Jose del Bado and Miguel Lucero, resident of the canada of Cochiti, both of whom I know and accredit, and the first said that she did sell and in fact sold to the lat-er, n-mely a piece of agricultural land she had in said canada of Cochiti, which she had by inheritance from her late father, that the said piece of land is composed from east to west of fifty varas and its boundaries are on the north as far as the grant, on the south as far as the Rio Bajo of said canada, on the east with lands of Jose Leandro Lucero, on the west with lands of the same purchaser, and the said land was sold by the said Beatriz Lucero to the said Miguel Lucero for the price and sum of twenty-four and a half dollars in silver, with which amount the said Beatriz Lucero declared herself to be satisfied, pleased and paid, and she says that said land is not worth more and if it is or may be worth more she *ama*de grant and gift of the excess in value to the said Miguel Lucero, pure, simple, perfect, irrevocable as denominated by the law *inter vivos* whereupon she renounces all laws which may be in her favor, and that she will not dispute nor claim it, neither now nor at any time, neither for herself nor for her sons nor any other person and if they should dispute or claim it that she will protect him at her own expense until he is left in a quiet and peaceful possession of the said land she has sold and the said vendor empowers the national justices to all and each one where this document is shown and particularly to those of this jurisdiction that with all the rigor of the law she may be compelled and obliged to the fulfilment

of this conveyance, as if it had been by definitive judgement of a competent judge, tried, judged and affirmed with full consent and not appealed, for whose guarantee she obligat-s and binds her person, and any real or personal property that she has or may h-ve, all of which said vendor granted before me, the citizen Franco. Albino Aragon, constitutional alcalde of said jurisdiction, and the witnesses with whom I acted for want of a notary public, of which there is not one in the Territory. And the vendor did not sign it. She said she did not know how. I, said alcalde, with the witnesses of my assistance signed it, in the said village, on said day month and year, to which I certify.

FRANCISCO ALBINO ARAGON.

Assistance:
MARIANO JOSE SANCHES.
JOSE GALLEGO.

317 PLAINTIFFS' EXHIBIT No. 24.

Spanish.

Digo Yo Santiago Montaño que le bendi a mi hermano Jose Lucero, la tierra que tenia de erencia de mi difienta Madre que son sinco varas y una cuarta por precio de diez pmiesos al corriente de la tierra los que he recibido a nu entera satisfacion y contento y por no poderle hacer su ducumento en este mismo acto le doy esta hoy 3 de Noviembre de 1826.

Y por no saber firmar Rogue a Sor. Albino Aragon lo hisiera y firmo por mi a riesgo de Santiago Montano.

FRANCO. ALBINO ARAGON. [R.]

"*Translation of the Above.*"

I Santiago Montaño declare that I sold to my brother Jose Lucero which I had by inheritance from my late mother, which are five varas and a quarter for the price of ten dollars current money of the land, which I received to my entire pleasure and satisfaction and not being able to make his deed at this present moment I give him this, this day 3rd of November of 1826.

And not being able to sign I requested Mr. Albino Aragon to make it, and he signed for me at the risk of Santiago Montaño.

FRANCO. ALBINO ARAGON. [R.]

318 PLAINTIFFS' EXHIBIT No. 25.

Digo Yo Santiago Giron que e receibido la erencia que me toca de mi finado padre Jose Antonio Giron a toda mi satisfacion y contento la que me ha cido entregado por los C. C. Jose de la Cruz Giron y Albino Aragon como albaceas que fueron de mi sitado finado padre y para que coste les di este en Cochiti a hoy 19 de Noviembre de 1839 y por no saber firmar pongo en mi nombre un senal de cruz.

SANTIAGO GIRON X.

Translation.

I, Santiago Giron, say that I have received my share of my late father's estate, Jose Antonio Giron to my entire satisfaction and pleasure, which has been delivered to me by Messrs. Jose de la Cruz Giron and Albino Aragon, as executors of my said late father, and to certify to it I give this in Cochiti today, the 19th of November, 1839, and not being able to sign I put the mark of the cross to my name.

SANTIAGO GIRON X.

319 PLAINTIFFS' EXHIBIT No. 26.

Spanish.

En este puesto de la cañada de Cochiti dia ventiseis de Febrero de mil Ochocientos sesenta años ante mi el Teniente de alcalde mayor Martyn Gallego parecio ante mi Laureano Lucero y Antonio Santistevan a quienes doy fee conseo y dijo dicho Laureano Lucero que le bendia y le bendio a Antonio Santestevan una suerte de tierra en precio de ochenta pesos y cantidad que el dereche llama inter bivos sobre que renuncia las lelles fechas en corte de al caladenases que trata de las cosas que se benden las dechas tierras se las da como costara que son ochenta baras pora el Oriente con tierras del decho bendedor pora el sus linda con el rio para el poniente linda con tierros de Miguel Lucero para el norte linda con la loma de torido es camino libre y se las bendio consentimento de sus ermanos y por si acazo susediere el que salga tersero de mejor derechos asta lo necesario, como tambien renuncio las lelles como lambien renuncio que ablan a mi fabor de justimano a utie ni nesesario como tambien renuncio las lelles como tambien renuncio que ablan a mi fabor de Justiniano y Belellano senatus con lo general del derecho lo asi cumplir me someto a las reales justicias de su magestad pora que me aprimen al cumplimento de dicha escritura de venta real como si fuera por sentencia definitiva de Jues competente con autoridad de cosa jusgada y lo otorgo yo teniente de alcalde mayor en mil setesientos sesenta y sinco anos 1765 y lo firme con
320 tres testigos de mi asistencia a ruego mio por mi y por los los testigos llo dicho Teniente de alcalde mayor lo autue como jues resetor a falta de escribano publico real que no lo ay en todo este reino y en el presente papel por no correr de ningun sello en estas portes de todo doy fee Teniente.

MARTYN GALLEGO.

Testigo:
PEDRO ANTONIO TRUGILLO.
Testigo:
SEBASTIAN DE SALAS.
Testi*do*:
FRANCISCO BASQUES BORREGO.

321 PLAINTIFFS' EXHIBIT No. 26.

Translation.

In this place of the canada of Cochiti on the 26th day of February, 1760, before me, deputy alcalde mayor, Martin Gallego personally appeared Lauriano Lucero and Antonio Santistevan, both of whom I know and accredit, and the said Laureano Lucero said that he did sell and in fact sold to Antonio Santistevan a piece of land agricultural for the price of eighty dollars, which sum the law denominates as *inter vivos*, whereupon he renounces the laws enacted in court of alcaledanexes which treats of things which are sold and the said lands he gives to him as they are bounded, which are eighty varas, on the east with lands of said vendor, on the south with the river, on the west with the lands of Miguel Lucero, on the north with the barren slope; it is a public road, and he sold it with the consent of his brothers, and if perchance it should happen that I should be mediator I shall support him with my own expenses as far as it is necessary also he renounces and did renounce the laws which may be in his favor of Justiniano and Belelano Senatus, judgement of the new and of the old constitution with the general right and to comply in this way I submit to the royal courts of His Majesty that they may compel me to the fulfilment of the said deed of *royal* sale as if it were a sentence rendered by a competent judge, a sentence passed, tried, judged and affirmed, which I deputy alcalde mayor grant 1765. Signed with three assistant witnesses at my own request and for me and for the witnesses. I said deputy alcalde mayor acted with the power of a commissioned judge there being no notary royal or public in this kingdom and on this paper not having any stamped, all of which I said deputy alcalde mayor certify.

MARTIN GALLEGOS.

Witnesses:
PEDRO ANTONIO TRUJILLO.
Witnesses:
SEBASTIAN DE SALAS.
Witnesses:
FRANCISCO BASQUES BORREGO.

322 PLAINTIFFS' EXHIBIT No. 27.

Spanish.

En este puesto de la cañada dé Cochiti en dies y seis dias del mes de Frebreo de mil setecientos sesenta y synco años ante mi el teniente de alcalde mayor Martin Gallegos á quienes doy fe coñosco y digo dicho Miguel Lucero que le bendio a autorise Santisteban una suerte de tyerra en precio y cantidad de vejnte pezos y con la dycha cantidad se da por contente que es la cantidad de la tierra sesenta varas y una y media & que el derecho llama ynterbibos, sobre que re-

nuncia lelles fechas en corte de al cladenares que trata de los cosas que se benden y las dichos tierras se las da y bendio como costora por sus mojeneras por el oriente con tierras del Bendedor por el sus el sitio por el poniente con tierras de Ynacvio Luzero tambien confiesa, el dicho Miguel Lucero que da un ped-zo de tiyerra que le hase gracia y donacion al dicho comprador Antonio Santisteban que las goze con su Muges y si en algun tiempo muriere que los gose su hijo Juan Santisteban y confiesa que es su ultima bolunta su muges Francisca Santisteban y que puedan ser oydos en juicio ni fuera del en juicio ni fuera del nacidos ni por nacer ni habidos ni por aver estos no son oydos en jucio ni fuera del lo firmo con cuatro testigos de mi asistencia a ruego mio ó por mi y por los testigos y dicho teniente de alcalde mayor le autue como
323 jues resetor a falta de escribano publico Real que no hay en este reino y en el present papel por no correr de ningun cello en estas, de todo doy fe a ruego del teniente.

MARTIN GALLEGO.

Testigo:
PEDRO ANTONIO TRUGILLO.
Testigo:
SEBASTIAN SALOS.
Testigo:
MANUEL GALLEGO.
Testigo:
FRANCISCO GIRON.

324 PLAINTIFFS' EXHIBIT NO. 27.

Translation.

In this place of the canada of Cochiti on the 16th day of the month of February of 1765 personally appeared Miguel Lucero and Antonio Santisteven, both of whom I know and accredit, and said the aforesaid Miguel Lucero that he did sell to Antonio Santisteven a piece of agricultural land for the price and sum of twenty dollars, and with the said price he is satisfied, and the land measures sixty-one and a half varas &c. which the law denominates *inter vivos* whereupon he renounces laws enacted in the court of alcaledaneres, which treat of things that are sold, and said land he sold it to him as bounded by its landmarks, on the east with lands of the vendor and on the south the river, on the west with lands of Ygnacio Lucero; also said Miguel Lucero acknowledges that he gives a piece of land of which he makes grant and giit to the said purchaser Antonio Santisteven, that he may enjoy them with his wife and should he die at any time his son may enjoy them, Juan Santisteven, and acknowledges that it is his and his wife's free will, Francesca, Santisteven, and that they may not be heard in court nor out of it, neither his born children nor those that may be born—these are not heard in court nor out of it. He signed it with four assistant witnesses at my own request for me and for the witnesses and I

said deputy alcalde mayor acted with the power of a delegate judge, for want of royal notary or public notary, there being none in this kingdom, and on this paper not having any stamped in this place. To all this I certify at the request of the deputy alcalde mayor.

MARTIN GALLEGO.

Witnesses:
PEDRO ANTONIO TRUGILLO.
Witnesses:
SEBASTIAN SALAS.
Witnesses:
MANUEL GALLEGO.
Witnesses:
FRANCISCO GIRON.

325 PLAINTIFFS' EXHIBIT No. 28.

Spanish.

En este puesto de la Canada de Cochiti en trese dias del mes de Enero del ano mil setesientes sesenta y ocho anos ante mi el temente Alcalde mayor Martyn Gallego parecieron ante mi Lauriano Lucero y Lugarde Balencia a quienes doy fee conosco y dijo dicho Laureano Lusero que le bendia y le bendio a Lugarde Balencia une suerta de tierras en precio y cantidad de docientes y quinse pesos y con la dicha cantidad sedio por contento pagado y satisfecho y que se demas babu las dicha tierras de la demacia le ese gracia y donacion pure mera perfecta yrrebocable que derecho yama ynter vivos sobre que renuncia le leyes fechas en corte de alcaledameres que trata de las coras que se benden y la dicha tierra se la de con entrades y salides libres en las dichas tierras y son sus linderos por la parte del norte aste donde resa el sitio por la parte de el poniente linda con tierras de el dicho bendedor por la parte de el sur linda con la coma por la parte de el oriente con tierras de Pedro Antonio Trujillo y tierras de la india Rosa y las vendio con sentimiento de todos sus hermanos y por sy acaso susediere el que salga tercero de mejor derecho tomare la dosa mi costa pagandole los aumentos y mejoras aun que ne sea util ni nesesario como tambien renuncia las lelles del ordenamiento real y la ley syr eu bemente como tambien renuncia las leyes que ablan a mi fabor de justimieno y beleyano sanatus consulta mebor y bieja cestituyen con lo general de el derecho y por le asi cumpler me someto a les reales justisias de su magestad por que me apremien al cumplimiento de la decha escritura de bente real como di fuera por sentencia definitiba de jues competente con autoridad de cosa jusgada y lo otorga y el teniente alcalde mayor en trese dios de el mes de enero de el ano de mil setesientos setenta y ocho lo firmo con dos testigos de mi asistencia y dicho teniente de alcalde mayor cantere como jues resetor a falta de escribano publico real que no ley hay en este reyno y en el presente papel por no correr de ningun sello en estas partes de todo foy fee y dicho teniente alcalde mayor.

MARTYN GALLEGO.

PEDRO ANTONIO TRUJILLO.
CAYETANO LORENSO MONTOYA.

Y estando presente yo dicho teniente de alcalde mayor y los dos testigos de mi asistencia y Laureano Lucero y Lugarde Balencia en las dichas tierras la bey y las madi con bara castellana y son lo que dicho Laureano Lucero le bendio a Lugarde Balencia tresentes y una bora de tierra labradar en la conformidad que tengo dicho a y en testimonio como en el original para seguridad firmesa lo otorgo yo dicho teniente alcalde mayor en trese dias de el mes de enero deel ano mil setesentos y ocho anos.

326 PLAINTIFFS' EXHIBIT NO. 28.

Translation.

In this place of the can-da de Cochiti on the 3rd day of January 1768 before deputy alcalde mayor Martin Gallego personally appeared Lauriano Lucero and Lugarde Valencia both of whom I know and accredit and the said Lauriano Lucero declared that he did sell and sold to Lugarde Valencia a piece of agricultural land for the price and sum of two hundred and fifteen dollars and with said amount he declared himself pleased paid and satisfied and if the said land is worth more of the excess in value he makes her grant and gift pure simple that he renounces the laws made in the court of alcaledaneroas which treats of things which are sold and he gives the said land with entrances and outlets free to the land and its boundaries are on the north as far as the common lands on the west with lands of the said vendor on the south with the hill and on the east with lands of Pedro Antonio Trujillo and lands of the Indian woman Rosa and he sold it with the consent of all his brothers and in case if it should happen that I should be mediator for his better and just claim I shall support him at my expenses paying him for the advancement and improvements even though they may not be of use nor necessary as well as renounces the law of the royal edict, and the laws without inconvenience and also renounces the laws of *justimiano balellano senetus* of the old and new constitution that may be in my favor with the general right and to comply in this way. I submit to the royal courts of His Majesty that they may compel me to the fulfillment of said bill of royal sale as if it were definitive sentence of a competent judge sentence passed tried affirmed and judged and I said deputy alcalde mayor on the 13th day of January of 1768 signed it with two assistant witnesses, and I, said deputy alcalde mayor acted with power of a delegate judge in the absence of royal notary public there being none in this Kingdom and on this papers there being none stamped in this place all of which I certify. I said deputy alcalde mayor.

MARTIN GALLEGO.

Witness:
PEDRO ANTONIO TRUJILLO.
Witness:
CAYETANO LORENZO MONTANO.

And being present I said deputy alcalde mayor and the two witnesses of my assistance and Laureano Lucero and Lugarde Valen-

cia in the said lands I saw and measured them with Castilian vara and are those which Lauriano Lucero sold to Lugarde Valencia three hundred and one varas of cultivated land that it may agree with what I have said. I affix this testimony with the original for its steadiness and protection, I said deputy alcalde mayor grant it on the 13th day of January of 1768.

327 PLAINTIFFS' EXHIBIT No. 29.

Spanish.

En este pueblo de San Buenaventura de Cochiti Jurisdicion de los Queres en viente y tres dias del del mes de deciembre del mil ochocientes y sincoanos ente mi el cindadano Vicente Tafoya Alcalde Constitucional de dicha jurisdicion atnando como presidente con dos testigos ante mi parecieron pres-ntes Bartolome Juan Jose y Juana Balencias ambos tres hermanos hijos de Lugarda Balencias y J-an Padilla vesinos de la Canada de Cochiti a quienes doy fee conosco y digeron los tres primeros que vendian y en efecto vendieron al nominado Juan Padilla es a saver una suerta de tierra que tenian en el dicha Canada de Cochiti que se compone de trecientes varas castellanas y que son sus linderos segun y como resa el original que lo entriegan al nominado Juan Padilla y que dicha tierra la an bendido los vendedores libre de toda y poteca con derechos entradas y salidas libres como consta en el original por el precio y cantidad de ciento y cinquenta y cino pesos fuertws y que con cuya cantidad que daron los referidos vendedores contentes pagados y satisfecho de la demacia les hace al comprador gracia y donacion de ella pure mera perfecto irrebocable que el derecho llama inter vivos que la dicha tierra la hubieron los bendedores Bartolome Juan Jose y Juana por herencia que les toco de su finada Madre Lugarda Balencia y para que este traspaso no caresca de ligitimidad en favor del interesado me suplican los dichos vendedores que para que ellos no sean uinos en juicio ni fuera del pusiere en este trespaso en fabor de Juan Padilla ni decreto judicial para que si en algun tiempo ellos alguna de sus herederos quisieran interrunpir al dicho Juan Padilla si obligan los dichos vendedores a defender la dicha tierra hasta degar en quiete y pacifica posecion de dicha tierra al nominado Juan Padilla todo lo otorgan lor dichos vendedores ante mi dicho Jues Alcalde constitucional y testigos de asistencia con quenes autuo por receptoria y no firmaron los otorgantes por que dijeron no saber firmar y dicho alcalde de firmo con los testigos de asistencia en el espresado pueblo en dicho dia mes y ano que todo doy fe.

VICENTE TOFOLLA, *Presidente.*

A-istencia:
SEBASTIAN SALAS.
Asistencia:
JUAN GONZALES.

Este titulo y su original queda traspasado en favor de Antonio Serafin Lucero por balor recibido y lo firmo hoy 6 de Agosto de 1854.

328 PLAINTIFFS' EXHIBIT NO. 29.

Translation.

In this town of San Buenaventura of Cochiti jurisdiction of thr Queres on thr 23rd day of December 1805 before me the citizen Vicente Tafoya constitutional alcalde of said jurisdiction acting as president with two witnesses personally appeared Bartolome Juan Jose and Juana Valencia three brothers and sister children of Lugarda Valencia and Juan Padilla residents of the canada of Cochiti all of whom I know and accredit and the three first said that they did sell and in fact sold to the said Juan Padilla namely a piece of agricultural land which they have in the said canada de Cochiti which is composed of three hundred Castilian varas and its boundaries are according to the original document which they deliver- to the said Juan Padilla which said land the vendors have sold free of all mortgage with the right of entrance and outlet free according to the original for the price and sum of — hundred and fifty-five dollars silver and with which sum the said vendor- declared themselves pleased paid and satisfied and of the excess in value they make the purchaser grant and gift pur- simple perfect irrevocable denomi*an*ted by the law as *inter vivos* and the *the* said land thw vendors received as their sh-res of inheritance from their late mother Lugarda Valencia and that this transfer may not lack legality in favor of the party interested the said vendors requested me that they may not be heard in court nor out of it to place in this transfer in favor of Juan Padilla my judicial decree that if at any time they or any of their brothers should want to obstruct the said Juan Padi-la the said vendors bind themselves to protect the said land until the said Juan Padi-a is left in a quiet and peaceful possession, of said land, all of which the said vendors granted before me said constitutional alcalde and assistant witnesses with whom I act with power of a commissioner judge and the grantors did not sign because they said they did not know how to sign I said alcalde signed it with the witnesses of assistance in the said town on said day month and year all of which I certify.

VICENTA TAFOYA, *Presidente.*

Witnesses:
SEBASTIAN SALAS.
Witnesses:
JUAN GONZALES.

This title and its original are transferred in favor of Antonio Serafin Lucero for value received. I sign it today 6th of August 1854.

JUAN PADILLA, *Grantor.*

329 PLAINTIFFS' EXHIBIT 30.

Spanish.

En este puesto de la Pena Blanca jurisdicion de San Buenaventura de Cochiti a los deis y seis de mes to Octubre de mil ochocientes treinta y dos anos ante mi sor Miguel Cabesa de Baca Alc*la*de constitucional del espresado partido comparecieron presentes ante mi el condadano Santiago Hurtado cecino del San Miguel del Bado y Juan Gonzales besino de la Canada de Cochiti y dijo el primero que bendia y en efecto dendio el segunda ciento una varas de tierra en la mencionada Canada de Cochiti siendo sus linderos por el oriente contierras de Sebastian Apodaca el poniente con tierras de Juan Ma. Gallegos al sur con tierras de Miguel Maes y al norte el lindero de la merced cuya tierra se la dio por el precio y cantidad de cincuenta pesos puertes los que confiesa el primero haber recibido del segundo a la satisfacion y contento y dijo el dicho Hurtado que seimas bale or baler pueda le hace gracia y donacion pure mera que irrebocable el derecho llama inter vivos cediendo y traspasando en el espresado Gonzales su propio fuero domicilio y vecindad sobre que renuncia de todas las leyes que hablen a su favor y mas dice el ve dedor de que no le pondran plaito demanda in contradicion alguna y sk alguna le pusiere no sea oido en juicio ni fuera de el obligandose tambien con su persona bienes raises habidos y por haber a ponerlo en pas queta y pacifica posecion cual para lo rogue al Sor. Alc*la*de constitucional de la mencionada jurisdicion autorisara esta escritura y yo dicho dije que le autorisaba y antoriso quantos por derecho me es conferido firmandola con dos testigos de asistencia no haciendolo los referidos por no saber escribir y hicelo yo en le referido dia mes y ano que doy fe.

JOSE MIGUEL BACA.
NEPUMOSENO SANDOVAL.

De asistencia:
JUAN JOSE DE ARSE.

En este puesto de la Canada de Cochiti en triente dias del mes de Marzo de mil ochocientes treinta y cuatro pomparecio presente ante mi Jose Ygnacio Montoya Alcalde constitucional de dicha jurisdicion lo cindadanos Juan Gonzalez y Juan Padilla y dijo el primero que traslasaba y en efecto traspaso en favor del segundo la tierra segun el numero de varas consta el antesedente documento con los mismos linderos acion y derecho que en el tiene por baler recebido y lo ifirmo con migo el otergante en dicho dis mes y ano de que doy fe.

JUAN GONZALES.

330 PLAINTIFFS' EXHIBIT NO. 30.

Translation.

In the place of the Pena Blanca jurisdiction of San Buenaventura of Cochiti on the 16th day of October 1832, before me the Sr. Miguel Cabesa de Baca constitutional alcalde of the said distr*c*it personally appeared the citizen Santiago Hurtado resident of San Miguel de Bada and Juan Gonzales residents of the Canada de Cochiti and said the first that he did sell and in fact sold to the second — hundred and on- varas of land on the said Canada de Cochiti being its boundaries on the east with land of Sebastian Apodaca and on the west with lands of Juan Maria Gallegos on the south with lands of Miguel Maes and on the north the boundary of the grant which land he sold for the price and sum of fifty dollars silver which the first acknowledges having received from the second to his pleasure and satisfaction and the mentioned Hurtado said that if it is worth or may be worth more of the excess in value he makes grant and gift pure simple and irrevocable d-ominated by the law as *inter vivos* ceding and trans*form*ing to the said Gonzales his own privilege habitation and vi*n*cinity whereupon he renounces the laws that may be in his favor and further declares the vendor that he will not dispute or claim it or op*o*ose in any way or if any one should dispute it that they may not be heard in court nor out of it bidding also his person- — real property I have or may have until left in peace and a quiet possession for which I requested the constitutional alcalde of the mentioned jurisdic*t*tion to authorize this deed and I said alcalde said that I would and do authorize it all which by right i*n* conferred upon me signing it with two assistant witnesses not being done by the mentioned parties because they do not know how to write and I did it on the said day month and year of which I certify.

JOSE MIGUEL CABESA DE BACA.

Witness:
JUAN JOSE ARSE.
Witness:
NEPREMOSENO SANDOVAL.

In this place of our Lady of Guadalupe of La Canada de Cochiti on the 30th day of March 1834, personally appeared before me Jose Ygnacio Montoya constitutional alcalde of said jurisdiction the citizens Juan Gonzales and Juan Padilla and the first said that he did transfer and in fact transferred in favor of the second the land according to the number of varas that appear in the above document with the same boundaries shares and rights which he had for value received and the grantor signed with me on the said day month and year of which I certify.

JOSE YGNACIO MONTYOA.
JUAN GONZALES.

331 PLAINTIFF'S EXHIBIT No. 31.

Spanish.

En este puesto de Nuestra Senora de Guadalupe de la Pena Blanca Jurisdicion de San Buenaventura de Cochiti a los trienta y un dias del mes de Mayo de mi ochocientes treinta y cuatro ante mi el Cindadano Jpse. Ygnacio Montoya Alcalde Constitucional de dicha jurisdicion comparecieron presentes los Cindadnaos Sabastian de Apodaca y Juan Padilla ambos becinos de la Canada de Cochiti Aquienes doy fee conosco y dijo el espresado Sebastian de Apodaca que bendia y con efecto bendio al nominado Juan Padilla es a saber un pedaso de tierra que tiene o tenia en dicha canada de cochiti que se compone de ancho de ciento y seis varas y de largo lo que resa la merced del espresado puesto con mas una piesto de casa de adobe que esta en la misma tierra y son seis linderos por la parte del norte hasta donde resa la merced real de dicha canada y por el sur con tierras de los Maeses por el oriente linda con tierras del mismo comprador y por el poniente con tierras del cindadano Juan Gonzales y dicha tierras se las vendio el espresado Apodaca al referido Padilla por el precio y cantidad de ciento y ocho pesos al corriente de la tierra que de cuya cantidad quedo dicho Apodaca contento y pagado y satisfecho y que no vale mas dicha tierra y si mas bale or baler pueda de la demacia le hace gracia y donacion pure mera perfecta a irrebocable que el derecho llama inter vivos sober que renuncia las leyes de la Nova Nomerara pecunia y paga las de la man Comunidad que abla sobre el justo precio sobre wue no le pondra pleito in demanda alguna ni ahora ni en ningun otra tiempo ni por si ni por su muger ni por sus hijos ni por ninguna otra persona y que y que si acso se lo pusiere pleito demanda o contradicion alguna que saldra al reparo hasta dejarlo en quiete y pacifica posecion de la espresado tierra que le ha vendido y da poder dicho vendedor a las justicias de poder ejecutivo y en particular a las de esta jurisdicion para que por todo rigor de derecho le compelen y aprimien a cumpliemto de esta escritura como si fuera por sentencia difinitiva de jues competente posada con autoridad de cosa pusgada comsentida y no apelada y para cullo san anmiento obliga y obligo su persona bienes raises muebles havidos y por haber todo lo cual otorga dicho vendedor por ante ni dicho alcalde y testigo de asistencia con quienes autuo por receptoria a notoria falta de escribano publico que no la hay en esta territorio y no firmaron los otorgantes por que dijeron no saber firmarlo yo con los de mi asistencia en el espresado punto en dicho dia mes y ano que de todo doy fee.

JOSE YGNACIO MONTOYA.

Asistencia:
JUAN MARIA MARTIN.
Asistencia:
J. ESTEBAN ARAGON.

TERRITORIO DE N. MEJICO, }
Condado de Santana, }

En este dia de Agosto de 1854 ante mi alvino Aragon uno de los pueses de pas en y por dicho condado comparecio personal mente Juan Padilla y dijo que la tierra que consta con este documento el numero de varas linderos aciones y domicilio como consta en el ante adente documento traspasa y traspaso en favor de Antonio Serafin Lucero por balor recebido y lo firmo hoy el dia de la fecha arriba echa.

JUAN PADILLA, *Otorgante.*

ALVINO ARAGON,
Jues de Paz.

332 PLAINTIFFS' EXHIBIT No. 31.

Translation.

In the place of our Lady of Guadalupe of the Pena Blanca jurisdiction of San Buenaventura of Cochiti on the 31st day of the month of May 1834 before me the citizen Jose Ygnacio Montoya constitutional alcalde of said jurisdiction personally appeared the citizens Sebastian Apodaca and Juan Padilla both residents of the Canada de Cochiti and whom I know and accredit and the said Sebastian Apodaca said that he did sell and in fact sold to the mentioned Juan Padilla namely a piece of land he has in said Canada de Cochiti which is composed of a hundred and six varas wide and long as far as the grant of said place besides a room of an adobe house which is in the same land and are its boundaries on the north as far as the grant of said canada and on the south with lands of the Maeses and on the east with lands of the same purchaser on the west with lands of the citizen Juan Gonzales and said land the mentioned Apodaca sold to the said Padilla for the *pirce* and sum of hundred and eight dollars current money of the land with which sum the Apodaca declared to be pleased paid and satisfied and that said land is not worth more and if it may be worth more of the excess in value he makes grant and gift pure simple and irrevocable whereupon he renounces the laws of the *nova numarara pecunia* proof and payment those of *man cumunidad* which treats of the just price whereupon he will not dispute nor cl*ia*m it neither now nor at any other time neither for himself nor his wife nor his children nor by any other person and in case they should dispute claim it or oppose him that he will protect him until he is left in a quiet and peaceful possession of the said land he has sold him and the said vendor gives power to the courts of executive power and particularly to those of this jurisdiction that he may be compel-ed and foreed with all the rigor of the law to the fulfillment of this deed as if it was by defin-tive sentence passed by a competent judge sentence passed tried affirmed and judged with consent and not appealed and for whose guarantee he binds and did bind his *person* real and personal property he has or may have all of which

said vendor granted before me said alcalde and witnesses of assistance with whom I act with power of delegate judge in the absence of notary public which there being none in this Territory and the grantors did not sign because they said not to know how to sign I signed it with the witnesses of my assistance in the said place and said day month and year all of which I certify.

JOSE YGNACIO MONTOYA.

Witnesses:
J. ESTEBAN ARAGON.
JUAN MARIA MARTIN.

TERRITORY OF NEW MEXICO, }
County of Santa Ana. }

In this 6th day of August of 1854 before me Alvino Aragon one of the justices of the peace of said county personally appeared Juan Padilla and said that, the land which according to this document the number of varas boundaries shares and habitations according to the above documen*y* he transfere and did transfer in favor of Antonio Serafin Lucero for value received and signed it today the day of the date above made.

JUAN PADILLA, *Grantor.*

ALVINO ARAGON,
Justice of the Peace.

333 PLAINTIFFS' EXHIBIT No. 32.

Spanish.

Digo yo Juan Gonsales besino y residente de la canada de Cochiti que he bendido sien varas de tierra y 3 piesecitas de casa y un alamo el pie de la casa y dicha tierra son sus linderos por el poniente con tierras de Juan Ma. Gallego per el sur con tierras de los Meses y por el oriente con tierras del el mismo comprador y por el norte hasta honde resa la merced real dicha tierra se la he bendido a cuidadano Juan Padia por ser el colindante de ella se la he bendido con todo mi ultima boluntad mia y la de mi muger y le he dado esta carte de centa pora que le sirva como un documento legal se la he dado dicha tierra por una baca porida y una bestia caballar con lo que he quedado contente y satisfecho y la bendio delante de dos testigos que loson Manuel Urtado y Antonio Jose Gallego y la firmo oy 16 de Mayo de este qno de mil 846.

JUAN GONSALES x.

Testigo:
MANUEL HURTADO.
Testigo:
ANTONIO JOSE GALLEGO x.

TERRITORIO DE NUEVA MEJICO, }
Condado de Santa Ana. }

Personalmento se presento ante mi Alvino Aragon uno de los jueses de Paz en y por el dicho candado Juan Padilla y dijo que la

tierra que le compro a Juan Gonsales como consta en la antesedente corta de venta la trespasa y trespaso en favor de Antonio Serafin Lucero por balor resebido y lo firmo este dia 6 de agoste de 1854.

JUAN PADILLA, *Otorgante.*

ALVINO ARAGON,
Jues de Paz.

334 PLAINTIFFS' EXHIBIT No. 32.

Translation.

I, Juan Gonzales resident of the Canada de Cochiti declare that I have sold — hundred varas of land and three rooms of a house and a cottonwood tree at the end of the house and said land has its boundaries on the west with lands of Juana Maria Gallego on the south with lands of the Meses and on the east with lands of the same purchaser and on the north as far as the royal grant, I have sold said land to the citizen Juan Padilla because he is contiguous to it with mine and my wife's full consent and I have given him this bill of sale that it may serve him as a legal deed. I have given him said land for a cow with a calf and a horse with which I am pleased and satisfied and sold it before two witnesses which are Manuel Hurtado and Antonio Jose Gallego and sign it today 16th of May of this year 1846.

JUAN GONZALES.

Witnesses:
MANUEL HURTADO.
ANTONIO JOSE GALLEGO.

TERRITORY OF NEW MEXICO, }
County of Santa Ana. }

Personally appeared before me Alvino Aragon one of the justices of the peace in and for said county Juan Padilla and said that the land he bought from Juan Gonzales according to the above vill of sale he trasnferred it in favor of Antonio Serafin Lucero for value received and signed it this day 6th od August 1854.

—— ——.

335 PLAINTIFFS' EXHIBIT No. 33.

Translation.

Habilitated for the second seal.

In this place of our Lady of Guadulupe of the Canada de Cochiti jurisdiction of the Queres on the 20th day of the month of June of 1786 before me Don Antonio de Armenta chief justice of the peace of said jurisdiction, appeared Miguel Hurtado and Jose Maria Chabes, neighbors of said jurisdiction and of whom I give faihh to know, and said Hurtado declared that he was selling and in fact sold to said Jose Maria Chaves a tract of agricultural land situated

in the canada proper which said piece of land comprises one hundred and fifty-three varas from ea-t to west in length, bounded on the east by lands of Manuel Ortiz on the west by lands of Diego Aragon, and from north to south it measures 118 varas. Said Hurtado sold the same to said Chaves for the price of sixty-two dollars current money of the land and which land said Hurtado obtained by purchase from Luisa Tenorio resident of the city of Santa Fé and widow of Bartolome Fernandez as will be seen from the annexed instrument of writing made in favor of Antonio Jose Armijo by Miguel Lucero a resident of said canada of Cochiti, and said vendor declared that he received the said sum of sixty-two dollars in full and to his entire satisfaction, and that he stands satisfied and paid, and that -he said piece of land is not worth more, and that if it is or may be worth more, the excess thereof he grants and donates unto said purchaser, pure, mere, perfect and irrevocable, which the law denominates *inter vivos*, whereupon the renounces the law of *non numerata pecunia*, proof and payment and *duobus rex de vendit y autentica pefide jusoribus* and that he will at no time whatever bring lawsuit, claim nor demand whatsoever, neither by himself nor his wife nor his children nor by any other person, and if any one should do it to pay no attention neither in law nor outside of it, and that he will defend the same at his own cost and expense until he leave said purchaser in quiet and peaceable possession thereof and he authorizes the royal authorities and those of this jurisdiction particularly to compel him with all the force of the law to the fulfilment of this obligation as if by a definite sentence rendered by a competent authority, to which fulfilment he pledges his person and his real and personal property, all of which was done and said by said Miguel Hurtado before me said alcalde mayor and the witnesses of my assistance acting as aforesaid in said Canada de Cochiti, said day month and year, and the vendor did not sign because he could not sign, and I said alcalde mayor did sign these presents with the witnesses of my assistance in the absence of a notary public or royal, there being none in this kingdom. Done on sealed paper according to the rules established of which I give faith.

Interlined Sta. Fé valid.

ANTONIO DE ARMENTA, [RUBRIC.]
Judge Receiver.

Witnesses:

ANTONIO BENITO LUCERO. [RUBRIC.]
SANTIAGO LOVATO. [RUBRIC.]

In this place of San Jose de las Huertas on the 20th day of the month of July, of 1802, before me Don Cleto de Miera y Pacheco alcalde mayor and captain of war of San Carlos de la Alameda and Queres and its districts appeared personally Jose Ma. Chaves, resident of the Canada de Cochiti and Jose Anto. Jiron also a resident of sai- Canada de Cochiti, whom I accredit and know and Jose Maria Chaves declared that he sells and in fact sold to said
336 Jose Anto. Jiron, transferring unto said purchase this letter

of sale in its full terms and purport observing only that the river boundaries are changed on account of the river changing its course into another channel and said land was sold for the sum of money specified in the first letter of sale and *siad* Chaves declares himself entirely paid and satisfied, and says further that if said land is or may be worth more, the excess thereof he presents and donates under said purchaser, pure, mere perfect and irrevocable which the *alw* designates *inter vivos*, whereupon said vendor renounces his right of homestead and neighborhood privileges and the laws of the *non numerata pecunia*, which speak in regard to one-half of the just price, and he delivers it free from any mortgage in order that he may sell it or exchange it as he likes unto any person whatsoever, as his own, and in order that he may enjoy the say, both he and his children, his heirs and successors, as their own which it is, and that he would at no time whatever bring claim nor demand, neither his wife, children, heirs nor their successors, and should any one do it to pay no attention whatsoever either in court or out of it, and he gives power to the royal authorities to compel him with all the force of the law to the fulfilment of this letter of sale, as if by a definite sentence rendered by a competent authority, and to which fulfilment he pl*e*g*d*es his personal and real estate, present and future and renounces whatever laws might be invoked in his favor, all of which was done and executed before me said alcalde mayor and the witnesses of my assistance. Said vendor did not sign himself because he could not write, and I signed the same with those of my assistance with whom I acted as commissioner in the absence of a notary public or royal, there being none in this kingdom, said day, month and year, of which I give faith.

CLETO MIERA Y PACHECO. [RUBRIC.]

Witness:

FRANCO. MIERA Y PACHECO.

JULY 15, 1877.

This is to certify that I have transferred the foregoing deed in favor of my comadre Cesaria Gonzales and her heirs, which I have sold with all my free will *fro* the sum of $14.00 in money.

SANTIAGO JIRON, *Vendor.*

Witnesses:

RAFAEL LUCERO x,
INOCENCIO x LUCERO, AND
MANUEL x HURTADO.

337 COCHITI EXHIBIT No. 33.

Habilitated for the second seal.

In this place of our Lady of Guadalupe of the Canada de Cochiti jurisdiction of the Queres on the 20th day of the month of June of 1786 before me Don Antonio de Armenta chief justice of the peace of said jurisdiction, appeared Miguel Hurtado and Jose Maria Chabes, neighbors of said jurisdiction and of whom I give fai*h*h to

know, and said Hurtado declared that he was selling and in fact sold to said Jose Maria Chaves a tract of agricultural land situated in the canada proper which said piece of land comprises one hundred and fifty-three varas from ea-t to west in length, bounded on the east by lands of Manuel Ortiz on the west by lands of Diego Aragon, and from north to south it measures 118 varas. Said Hurtado sold the same to said Chaves for the price of sixty-two dollars current money of the land and which land said Hurtado obtained by purchase from Luisa Tenorio resident of the city of Santa Fé and widow of Bartolome Fernandez as will be seen from the annexed instrument of writing made in favor of Antonio Jose Armijo by Miguel Lucero a resident of said canada of Cochiti, and said vendor declared that he received the said sum of sixty-two dollars in full and to his entire satisfaction, and that he stands satisfied and paid, and that -he said piece of land is not worth more, and that if it is or may be worth more, the excess thereof he grants and donates unto said purchaser, pure, mere, perfect and irrevocable, which the law denominates *inter vivos*, whereupon the renounces the law of *non numerata pecunia*, proof and payment and *duobus rex de vendit y autentica pefide jusoribus* and that he will at no time whatever bring lawsuit, claim nor demand whatsoever, neither by himself nor his wife nor his children nor by any other person, and if any one should do it to pay no attention neither in law nor outside of it, and that he will defend the same at his own cost and expense until he leave said purchaser in quiet and peaceable possession thereof and he authorizes the royal authorities and those of this jurisdiction particularly to compel him with all the force of the law to the fulfilment of this obligation as if by a definite sentence rendered by a competent authority, to which fulfilment he pledges his person and his real and personal property, all of which was done and said by said Miguel Hurtado before me said alcalde mayor and the witnesses of my assistance acting as aforesaid in said Canada de Cochiti, said day month and year, and the vendor did not sign because he could not sign, and I said alcalde mayor did sign these presents with the witnesses of my assistance in the absence of a notary public or royal, there being none in this kingdom. Done on sealed paper according to the rules established of which I give faith.

Interlined Sta. Fé valid.

ANTONIO DE ARMENTA, [RUBRIC.]
Judge Receiver.

Witnesses:

ANTONIO BENITO LUCERO. [RUBRIC.]
SANTIAGO LOVATO. [RUBRIC.]

In this place of San Jose de las Huertas on the 20th day of the month of July, of 1802, before me Don Cleto de Miera y Pacheco alcalde mayor and captain of war of San Carlos de la Alameda and Queres and its districts appeared personally Jose Ma. Chaves, resident of the Canada de Cochiti and Jose Anto. Jiron also a resident of sai- Canada de Cochiti, whom I accredit and know and Jose

Maria Chaves declared that he sells and in fact sold to said Jose Anto. Jiron, transferring unto said purchase this letter of
338 sale in its full terms and purport observing only that the river boundaries are changed on account of the river changing its course into another channel and said land was sold for the sum of money specified in the first letter of sale and *siad* Chaves declares himself entirely paid and satisfied, and says further that if said land is or may be worth more, the excess thereof he presents and donates unto said purchaser, pure, mere perfect and irrevocable which the *alw* designates *inter vivos*, whereupon said vendor renounces his right of homestead and neighborhood privileges and the laws of the *non numerata pecunia*, which speak in regard to one-half of the just price, and he delivers it free from any mortgage in order that he may sell it or exchange it as he likes unto any person whatsoever, as his own, and in order that he may enjoy the *say*, both he and his children, his heirs and successors, as their own which it is, and that he would at no time whatever bring claim nor demand, neither his wife, children, heirs nor their successors, and should any one do it to pay no attention whatsoever either in court or out of it, and he gives power to the royal authorities to compel him with all the force of the law to the fulfilment of this letter of sale, as if by a definite sentence rendered by a competent authority, and to which filfilment he pl*eg*des his personal and real estate, present and future and renounces whatever laws might be invoked in his favor, all of which was done and executed before me said alcalde mayor and the witnesses of my assistance. Said vendor did not sign himself because he could not write, and I signed the same with those of my assistance with whom I acted as commissioner in the absence of a notary public or royal, there being none in this kingdom, said day, month and year, of which I give faith.

CLETO MIERA Y PACHECO. [RUBRIC.]

Witness:

FRANCO. MIERA Y PACHECO.

JULY 15, 1877.

This is to certify that I have transferred the foregoing deed in favor of my comadre Cesaria Gonzales and her heirs, which I have sold with all my free will *fro* the sum of $14.00 in money.

SANTIAGO JIRON, *Vendor.*

Witnesses:

RAFAEL LUCERO x,
INOCENCIO x LUCERO, AND
MANUEL x HURTADO.

339 PLAINTIFFS' EXHIBIT No. 34.

Spanish.

En este puesto de Nuestro Padre San Buenaventura de Cochiti jurisdicion de los queres y San Carlos de la Alameda endies dias del mes de Marzo de mil ochocientos dos ante mi Don Cleto Miera

y pacheco Alcalde mayor de dicha jurisdicion 7arecieron ante mi Antonio Esteban Aragon y Jose Antonio Jiron ambos becinos de la canada de Cochiti a quieres doy fee conosco y dijo Antonio Esteban Aragon que vendia y con efecto vendio al mencionado Jose Antonio Jiron asaber un pedaso de tierra de labor que componen y tiene en la canada de Cochiti y dicho pedazo de tierra de norte su lindero el rio por el sur linda asta onde alcansa el sitio, por el oriente con tierras del propio comprador, por el poni*t*nte lindo con tierras de Juan Jose Aragon y dicho pedaso de tierra se compone de sesenta y dos baras casteyanos y dicha tierra dise dicho Estevan Aragon se las vendio a dicho Jose Zntonio Jiron por el precio y cantidad de sesenta y dos pesos de la tierra y sus corrientes como asimismo confiesa dicho Aragon aber recevido en su propia mano, a todo su contento y satisfacion que no vale mas dicho pedaso de tierra y que si mas bale o valer pueda de la demacia le ese gracia y donacion al comprador pura mera perfecta el irrevocable que el derecho llama inter vivos sobre que renuncia leyes de la non numerata pecunia prueba y paga sobre que no le pondran pleito ni demanda aora ni en ningun tiempo ni por si ni por su muger ni por sus hijos ni por ninguna otra persona y que si acaso se lo pusiere que no sean oidon en juicio ni fuera del y que saldra a la demanda a su costa asta dejarlo en quieta y pcifica posecion del espresado pedazo de tierra que le a vendido y da poder a las justicias de su magesta y en particular a la de este jurisdicion para que por todo rigor de derecho lo compelen y apremien al cumplimento de esta escritura como si fuera por sentencia difitiva de jues competente pasado con autoridad de cosa jusgada para cuyo sananmiento obliga y obligo su persona y vienes raises y muebles avidos y por aber todo lo cual otorga el dicho Antonio Estevan por anti mi dicho Alcalde mayor y testigos de asistencia antuando como dicho es en el espresado pueblo de Cochiti dicho dias me y ano y no firmo el otrogante porque dijo no saber firmolo yo dicho alcalde mayor y losde mi asistencia a falta de escribano publico ni real que de ninguna clase lo hay en toda esta provencia y ba en papel comun por no aber sallado que de todo doy fee.

CLETO MIERA PACHECO,
Jues Receptor.

Testigo de asistencia:
ESTANISLAO TRUJIO.
Testigo y a Ruego de:
JUAN JOSE ARAGON.
ESTANISLAO TRUJIO.

340 PLAINTIFFS' EXHIBIT No. 34.

Translation.

In this place of our father San Buenaventura de Cochiti jurisdiction of the Queres and San Carlos de la Alameda on the 10th of March 1802 personally appeared before me Don Cleto Miera y Pecheco alcalde mayor of said jurisdiction Antonio Estevan Aragon

and Jose Antonio Jiron both residents of the Canada de Cochiti whom I know and accredit and Antonio Estevan Aragon said that he did sell and in fact sold to the mentioned Jose Antonio Jiron to wit, a piece of agricultural land he has in the Canada de Cochiti and said piece of land is composed its boundaries on the north the river on the south as far as the grant on the east with lands of the purchaser on the west with lands of Juan Jose Aragon, and said piece of land is composed of sixty-two Castilian varas and said Estevan Aragon, said that he sold said land to the mentioned Jose Antonio Jiron for the *pirce* and sum of sixty-two dollars current money of the land which said Aragon acknowledges having received in his own hand to his pleasure and satisfaction and that said piece of land is not worth more, and if it is or may be worth more of the excess in value he makes grant and gift to the purchaser pure simple perfect and irrevocable denominated by the law *inter vivos* whereupon he renounces the law of the *non numerata pecunia* proof and payment and that he will not dispute nor claim it now nor at any other time neither by himself nor his wife nor his children nor by any other person and if they should claim or dispute it that they may not be heard in court nor out of it and that he will protect hi*n* at his expenses until he is left in a quiet and peaceable possession of said piece of land he sold him and e*n*powers the courts of His Majesty and particularly those of this jurisdiction that he may with all the rigor of the law be compelled and forced to the fulfilment of this conveyance as if it were by definitive sentence of a competent judge sentenced passed tried judged and affirmed for whose guarantee he binds his person and real and personal property he has or may have all of which said Antonio Estevan Aragon granted before said alcalde mayor and assistant witnesses acting as stated in the said pueblo of Cochiti in said day month and year and the gran*ot* did not sign because he said he could not write. I said alcalde mayor signed it with my assistant witnesses in the absence of notary public which there is none in this province and in common paper not having stamped all of which I certify.

CLETO MIERA PACHECO,
Treasurer Judge.

Witnesses of assistance:
ESTANISLAO TRUJIO.
JUAN JOSE ARAGON.
ESTANISLAO TRUJIO.

341 PLAINTIFFS' EXHIBIT No. 35.

Spanish.

Ase gracia y donacion pure mera perfecta e irrebocable que el derecho llama inter vivos y sobre renuncia las leyes fechas en corte de alcalde que trata de los cosas que se benden y las dichas tierras se las de con entradas y salidas libres en las dichas tierras y son sus linderos porla parte de poniente linda con tierras del dicho

vendedor por parte del sur linda con la loma por la parte del oriente con tierras de Pedro Antonio Trujillo y tierras de la india Rosa y las vendio con consentimiento de todo sus hermanos y por su acaso susediere el que salgan tercero de mejor derecho tomare la vos a mi costa pagandole los aumentes y mejores aunque no sea util ni necesario como tambien renuncia las leyes del ordenaniento real y la lei circumbini como tambien —. Anito la fiel y verdad hago mi firma y Rubrico acustumbrada y fueron los testigos a berla sacar Joseph Gonzales y Mariano Barela.

JOSEPH MIGUEL DE LA PENA.

Asstt.: JOSEPH GONZALES.
JPH. MARIANO BARELA.

Serobus consultos nueba y bieja constitucion con lo general del derecho y para lo asi cumplir me someto a las reales justicias de su magestad pora que mi apremien al cumplimiento de dicha escritura de venta real como si fuera por sentencia difinitiva de Jues competente con autoridad de cosa jusgada y lo otorge como tenitente de alcalde mayor y lo firme con dos testigos de asistencia de que doy fee.

MARTIN GALLEGO, *Testigo.*
JOSEPH MIGUEL DE LA PENA.

PEDRO ANTONIO TRUJILLO.

Asistencia:
LORENZO MONTANO.

Conquerda con su original que mere.

342 PLAINTIFFS' EXHIBIT NO. 35.

Translation.

—— —— makes grant and gift pure simple perfect and irrevocable denominated by the law *inter vivos* whereupon he renounces the laws made in the court of alcalde which treats of things which are sold and he gives him the said lands with free entrances and outlets to the said lands and its boundaries are on the north as far as the grant and on the west with lands of said vendor on the south with the hill on the east with lands of Pedro Antonio Trujillo and lands of the Indian woman Rosa, and he sold them with the consent of all his brothers, and in case it should happen to appear a third party with a better right I shall protect him at my expenses paying him for the advancement and improvements even though they may be useless and unnecessary and also renounces the laws of the royal edict, and the laws *circumbenir* as well as —— faithfully and truly corrected amended and in testimony of the truth I sign and make my rubric as usual and the witnesses to see it drawn were Joseph Gonzales and Mariano Barela.

JOSEPH MIGUEL DE LA PENA.

Witness-:
JOSEPH MARIANO BARELA.
JOSE GONZALES.

Senobus consultos new and old constitution with the general right and to fulfil this way I submit to the royal authorities of His Majesty that they may compel me to the fulfilment of this conveyance of royal sale as if it were by definitive sentence of a competent judge sentence passed tried judged and affirmed and I, said deputy alcalde mayor granted it ans sign it with two witnesses of my assistance of which I certify.

MARTIN GALLEGO.
PEDRO ANTONIO TRUJILLO.
LORENZO MONTANO.
JOSEPH MIGUEL DE LA PENA.

In accord with its original which —.

343 PLAINTIFFS' EXHIBIT No. 36.

En este puesto de la Cañada de Cochiti Arogasion de Nra. Señora de Guadalupe en dies y ocho dia del Mes del Marso de mil ochocientos dies y siete paresieron presentes ante mi Antonio Lucero vecino del Cañon de Jemes y el tente de la Cañada de Cochiti Dn. José Antonio Giron á doy fee conosco, y dijo dicho Lucero qe vendia y con efecto vendio á dicho teniente Giron es a saver un pedaso de tierra de pan llevar en dicha Cañada qe se conpone de cuarenta y ocho varas de ancho porel precio y cantidad de cuarenta pesos de la tierra de lo qe quedo dicho Lucero conviento y satisfecho y son sus linderos por el oriente con tierras *con tierras* de la difunta Monica Romero, por el poniente con tierras de Manuel Gallego, por el norte con el rio viejo, por el sur lo qe resa la Merced Real: y dise dicho bendedor qe se da por contento y pagado y qe no vale mas y qe si mas vale ó valer pueda de la demasia le ase gracia y donasion al mencionado Giron pura mera perfecta y irrevocavle qe el derecho llama ynter vivos sobre qe renuncia todas cuantas lelles le fueren á su favor para qe ninguna le valga sobre qe demasia las lelles de non numerata pecunia prueva y paeja sobre qe no le pondra pleito demanda alguna aóra ni en ningun tiempo ni porsi ni por su muger é hijos erederos y susesores ni ninguna otra persona, y si acaso le pusieren saldra dicho Lucero á la defensa del
344 cunplimiento de esta escritura asta dejarlo en quieta y pasifica posesion y da poder á las reales justias de su Magesta qe Dios guarde para qe con todo rigor de derecho le conpelan y apremien al cunplimiento de esta escritura como si fuera por sentensia difinitiva de jues competente pasada con autoridad de cosa jusgada para cuyo sanamiento obliga y obligo decho Lucero su persona vienes raises muevles avidos y por aver todo loqual otorgo por ante mi dicho alcalde mayor y testigos de mi asistensia; autuo a falta de escrivano real qe ne lo ay en esta provinsia y va en papel comun por no aver sellado y lo firmo con migo el apoderado de dicho Lucero para qe se ysiera esta escritura qe es Dn. Luis Maria Cabesa de

Baca y fermelo yo con los de mi asistencia en el espresado puesto en dicho dea mes y año de qe doy fee.

JUAN ANTTO. CAVESA DE BACA. [R.]

Asta.: MANUEL GREGORIO GALLEGO x.
Asn.: LUYS MA. CAVESA DE BACA. [R.]
Atsia.: JUAN ESTEVAN ARAGON. [R.]

345 (At foot of foregoing.)

En este puesto to nuestra Señora de Guadalupe de la Cañada de Cochiti en nuebe dias del mes de enero de mil ochocientos dies y ocho años se presentaron ante mi Dn. Juan Antonio Cabesa de Baca alcalde mayor de dha. jurisdicion José Antonio Jiron y Manuel Gregorio Gallego á quienes doy fé conosco et dixo dho. Jiron qe traspasaba y traspasó todos los derechos qe en esta escritura tiene y tenia en Manuel Gregorio Gallego ambos vecinos de dha. Cañada qe la Compro dho. Gallego en el presio y cantidad de cuarenta pesos del corriente de la tierra y suplicandome dho. soroes ynterpusiera mi autoridad y decreto judicial yo dho. alcalde dixe que la ynterponia y enterpasé caunta por derecho mes permetida firmando lo con los de mi asistencia en dho. dia mes y año de qe doy fé.

JUAN ANTONIO CABESA DE BACA. [R.]

Asa.: ANTONIO GALLEGO. [R.]

Á ruego de Don Juan Ignasio Salas,
ANTONIO GALLEGO. [R.]

346 & 347 PLAINTIFFS' EXHIBIT No. 36.

Translation.

In this place of the canada of Cochiti of our Lady of Guadalupe on the 18th day of March 1817 appeared personally before me Antonio Lucero resident of the Jemes canon and lieut. of the Canada de Cochiti Don Jose Antonio Jiron whom I know and accredit and said Lucero declared that he was selling and in fact sold to said Lieut. Jiron a tract of cultivable land that is a tract of land in the Canada de Cichiti comprising forty-eight varas in which for a- in consideration of the sum of forty dollars money of the land bounded on the east by lands of the deceased Monica Romero by the west by lands of Manuel Gallego on the north by the old river on the south by the limits of the royal grant and said vendor declared himself paid and satisfied with said sum of money and that said tract of land is not worth more and that if it is or may — worth more the surplus thereof he grants and dontaes unto said purchaser pure, mere perfect and irrevocable which the right names *inter vivos* and that he resigns all the laws in his favor and the laws of the *non numerate pecunia* proves and pays, and that he will at no time — law claim nor demand whatsoever neither himself nor his wife nor his children nor his heirs or successors and should any one do it he would de-

fend the contents of this inventure until leaving said purchaser in quiet and peaceable possession thereof and authorizes the royal authorities to compel him with all the force of the law to the fulfilment of this indenture as if it was by definite sentence of competent authority to which fulfillment he pledges his personal and real estate property obtained and to be obtained hereafter all of which was executed in and before me said chief justice of the peace and the witnesses of my assistance with whom I acted in the absence of the royal secretary there being none in this kingdom and in common paper having none sealed and the attorney of said Lucero signing with me. The attorney being Dn. Luis Maria Cabeza de Baca and those of my assistance said day month and year of which I give faith.

JUAN ANTTO. CABEZA DE BACA. [RUBRIC.]
LUIS MA. CABEZA DE BACA, *Attorney.* [RUBRIC.]

Ass.: MANUEL GREGORIO GALLEGO x.
VAN ARAGON. [RUBRIC.]

In this place of our Lady of Guadalupe of the Canada de Cochiti on the 9th day of the month of January, 1808, personally appeared before me Dn. Juan Antonio Cabeza de Baca chief justice of the peace of said jurisdiction Jose Antonio Jiron and Manuel Gregorio Gallego of whom I give faith to know and said Jiron declared that he was to transfer and did transfer the contents of this indenture in favor of Manuel Gregorio Gallego both being neighbors of the Canada de Cochiti and which said Gallego has bought for the sum of $40.00 land currency and I interposed my authority and judicial decree at their request all that conferred on me by law signing there presents with those of my assistance said day month and year of which I give faith.

JUAN ANTONIO CABEZA DE BACA. [RUBRIC.]

Ass.: ANTONIO GALLEGO. [RUBRIC.]
ANTONIO GALLEGO. [RUBRIC.]
By Request of Don Juan Ignacio Salas.

348 PLAINTIFFS' EXHIBIT *Exhibit* No. 37.

Spanish.

En este puesto de la Cañada de Cochiti Abogasion de Nuestra Señora de Guadalupe en dies y ocho dies del mes de marso de mil ochocientos dies y siete Ante mi Juan Antonio Baca Alce. mayor de dha. jurisdicion paresieron anti mi Manuel Gryego y Antonio Aragon vesinonon ambos dos de dha. Cañada á quienes doy fé conosco y dijo Antonio Aragon qe vendia y con efecto vendio á dho Gallego á saver un pedaso de tierra di pan llebar en dha. Cañada qe se compone de cuarenta y sinco varas de ancho por el presio y cantidad de cuarenta ps. del corriente de la tierra de lo que quede contento y satisfecho: y son sus linderos por el Oriente con tierras del teniente

Dn. José Antonio Giron, por el poniente con tierras del mismo comprador por el Norte el rio por el sur lo qe resa la merse Real y dise dicho Aragon qe se da por contento y pagado y qe no vale mas y qe si mas vale ó valer pueda de la demasia le ase gracia y donacion al mensionada Gallego pura mera perfecta ynrevocable qe el derecho llama ynter vivos sobre qe renuncia todas cuantas leyes le
349 fueren á su favor para qe ninguna le valga sobre qe denuncia las lelles de la nos numerata prueva y paga sobre qe no le pondran plito ni demanda alguna aora ni en ningun tienpo ni por si ni por su muger é hijos ni susesores ni otra persona y si acaso se le pusiere saldra dicho vendedor á la defensa del cunplimiento de esta escritura asta dejarlo en quieta y pasifica posesion y da poder á los Reales Justicias de su Magesta qe Dios guarde para qe con todo rigor de derecho le conpelan y premien al cunplimiento de esta escritura como si fuera por sentensia difinitiva de jues conpetente pasada con autoridad de cosa jusgada para cuyo sanamiento óbliga y óbligo dicho Aragon su persona vienes raises muevles avidos y por aver todo lo qual otorgo por ante mi dicho alcalde mayor y testigos de asistensia con quienes autuo á falta de escrivano real qe no le ay en toda esta provincia y va en papel comun por no aver sellado y no firmó el otorgante por no saver firmelo yo con los de mi asistensia en el espresado puesto en dicho dia mes y año de qe doy fée.

Entre renglon vale.

JUAN ANTTO. CABESA DE BACA. [R.]

De Asistensia:
JOSE ANTONIO GIRON. [R.]

D- Asistensia:
JUAN ESTEVAN ARAGON. [R.]

350 COCHITI EXHIBIT # 37.

Copy.

In this place of the Canada de Cochiti of our Lady of Guadalupe on the 18th day of the month of March of 1817, before me, Juan Antonio Baca, chief justice of the peace of said jurisdiction, personally appeared Manuel Gallego and Antonio Aragon, both neighbors of said canada, whom I give faith and know, and said Aragon declared that he was to sell and in fact sold to said Gallego a tract of cultivated land, to wit, a tract of cultivated land in said canada comprising 45 varas wide for an- in consideration of the sum of $40, land currency, which sum the said vendor received and declared himself entirely satisfied, said tract of land being bounded on the east by land of the lieutenant, José Antonio Giron, on the west by land of said purchaser, on the north by the river, on the south by the limits of the grant; and Aragon further said that said land is not worth more, and that if it is and may — worth more, the surplus thereof hr grants and donates unto said purchaser, pure, mere, perfect, and irrevocable, which the right nmaes *inter vivos*, and that

he also resigns all the — which may read in his favor, and the laws of the *non numerata pecunia* proves and pays, and also said there would be no claim nor demand to said land neither by him nor his wife, nor their children or their successors at no time whatever, and that should any party do it he would defend the said bargained land until leaving said purchaser in quiet and peaceable possession thereof, and authorizes the roy- authorities to compel him to the fulfilment of the contents of this indenture, with all the force of the law as if it was by definite sentence of competent authority, to which fulfilment he pledges his personal and real estate property obtained heretofore and to be obtained hereafter, all of which said vendor did, and execute in and before me, said chief justice of the peace, and the witnesses of my assistance with whom I act in the absence of the royal secretary, there being none in this kingdom, and in common paper not being any to be found. Sais vendor did not sign, because he could not write, and I did sign*ed* the same with those of my assistance in said place, day, month, and year of which I give faith.

Valid interlined.

JUAN ANTONIO CABEZA DE BACA. [R.]

Witnesses:

JOSE ANTONIO GIRON. [RUBRIC.]
JUAN ESTEVAN ARAGON. [RUBRIC.]

351 PLAINTIFFS' EXHIBIT No. 38.

Spanish.

TERRITORIO DE N. M., }
Condado de St. Ana. }

Personalmente conparesieron ante el abajo firmado jues de *de* pas del dho condado Bentura Gallego y José Maria Lusero ambos vesinos de la Cañada de Cochiti y demarcasion del precinto numero primero, á quienes doy fé conosco y dijo dho Gallego que traispasaba todo el derecho aucion y señorio que tenilla en el anterior documento en la persona del Señor Lusero por balor resibido de dose pesos y medio el efetibo dinero y q^e^ en virtu de ser haci le hase entrega el titulo original de que abla el anterior documento al citado Lusero para que pueda libremente aser huso de dh^a^ tierra como sulla propia vendiendola ó en a genandola de la manera q^e^ fuera su voluntad bajo el conselo de q^e^ ninguna persona podra ponerle enbaraso alguno en rason de este contrato y á se le puciere desde luego dijo el Señor Gallego se los tituilla responsable al sanamiento de dha tierra asi lo trato y firmo conmigo dho Jues en la
352 oficina de mi corte este dia 5 de Agosto de 1854.

MANUEL LUSERO, [R.]
Jues de Pas.

JOSE BENTURA GALLEGO. [R.]

Costa vendido á Señor José Maria Lucero la tierra que costa en otro docum^to^, por el precio de onse pesos dos riales recibidos y le entre que la escritura.

JOSÉ BENTURA GALLEGO. [R.]

353 PLAINTIFFS' EXHIBIT No 38.

Translation.

TERRITORY OF NEW MEXICO, }
County of Santa Ana. }

Personally appeared before me the undersigned a justice of the peace of said county Bentura Gallego and Jose Maria Lucero both neighbors of the canada de Cochiti precinct, ≠ —, whom I give faith and know and said Gallego declared that he was to transfer and did transfer all the right title and interest which he had in the proceeding deed, in favor of said Lucero for and in consideration of $12.50 in money value received and that in virtue of this sale he delivered unto the purchaser the original deed in order that he may make free use of said land either selling it or exchanging it as he *make* like and said vendor also said that no person will put — obstacle whatever to this indenture and in case of demand or claim he would be responsible to defend said land. Thus he made *the* bargained in my office this 5th day of August, 1854.

MANUEL LUCERO, [RUBRIC.]
Justice of the Peace.

JOSE BENTURA GALLEGO. [RUBRIC.]

I hereby declare that I have sold the land mentioned in another deed to the person of Jose Ma. Lucero, for the sum of $11.25, value received at the time of my delivering the indenture.

JOSE BENTURA GALLEGO. [RUBRIC.]

354 PLAINTIFFS' EXHIBIT No. 39.

Spanish.

En este Pueblo de San Buenaventura de Cochiti jurisdicion de los Queres en ocho dias del mes de Mayo de mil ochocientos veinte y nueve anos ante mi el ciudadano Jose Miguel Baca Alcalde Constitucional de dicha jurisdicion autuando con dos testigos de mi asistencia parecieron precentes Francisco Alvino Aragon y Juan Gervacio Aragon ambos dos besinos de dicha jurisdicion a quienes doy fee consoco y dijo el primero que como apoderado de Don Jose Antonio Ulivarri para que las mearo la venta que hijo dicho Ulivarri a dicho Juan Gervacio Aragon en la canda de Cochiti de une casa y un pedas de tierra que se halla en dicha canada que se compone le casa de cuatro piesicitas pagado a la casa se haya otra piesa casa que compro pablo Aragon en el mismo suelo sin tener mas derecho que a las paredes y dicho pedosa de tierra se compone de cuarenta y ciete varas y media y dicha casa y tierras las bendio el referido Ulivarri por el precio y cantidad de ciento cincuento pesos al corriente de la tierra siendo sus linderos por el norte hasta honde resa le merced de dicha canada y por el sur con el rio de dicho Canada, por el

oriente con tierras de Jose Lucero, por el poniente con tierras de los erederos del defunto Ysidro Lucero, que de cuya cantidad que de dicho Ulivarri pagado contento y satisfecho y que no vale mas dicha casa y tierra y que si mas bale o baler pueda de la demacia le hace gracia y donacion de ella al dicho Juan Gervacio Aragon pure mera perfecta e irrevocable que el derecho llma inter vivos sobre que renuncia las leyes de la non numerata pecunia prueba y paga las de duobus resdebendi y autentica perfide sobre que no le pondra pleito ni demanda alguna hora ni en ningun tiempo ni por si ni por su muger eredero ni por ninguna otra persona, y que si acaso se le puciere pleito demanda o contradicion alguna que saldra al repara a su costa hasta dejarlo en quieta y pacifica posecion de la espresada casa y tiene, que le ha bendido y da poder dicho vendedor a las justicias de la nacion y en particular a las de esta jurisdicion para que por todo rigor de derecho le compelen y apremien al cumplimiento esta escritura como si fuera por sentencia difintiva de jues competente pasada con autoridad de cosa jusgado consentida y no apelada para cuyo sanamiento obliga y obligo su persona bienes raices y mueblas abidor y per haber todo lo cual otorga dicho vendedor ante dicho alcalde y testigo de asistencia con quiemes autuo como jues receptor y para que conste lo firme por la notoria falta de escribano publico que de ninguna clase lo hay con los testigos de mi asistencia en dicho dis mes y ano de que doy fee.

JOSE MIGUEL BACA.

Asst.: JOSE ANTONIO SANDOVAL.
JUAN CAMPOS RELDONDE.

EL NACIMENTO, NEUBA MEJICO, *Julio* 18 *de*, 1877.

Esta es para que sepan todos como nosotros Florentina Lucero Manuel Aragon, vendimos ha si a Don Martin Lucero una tierra que resa este anterior documento y para que coste que la dicha vente es justa y vendadera traspasanos a dicho Lucero toder el poder facultad que las leyes la compelen y por lo tanto nos obliganos que si a dicho Lucero se le pusiere demanda o contradicion alguna sales nosotros a su reporo asta dejarlo en quieta y pacifica posecion todo lo cual otorganos delante de dos testigos.

FLORENTINA LUCERO, *Otorgante*.

Testigos:
SERAFIN PADIA.
JULIAN SEGURA.

355 PLAINTIFFS' EXHIBIT NO. 39.

Translation.

In this pueblo of San Buenaventura de Cochiti jurisdiction of the Queres on the 8th day of the month of May, 1829, personally appeared before me the citizen Jose Miguel Baca constitutional alcalde of said jurisdiction acting with two assistant witnesses Juan Alvino Aragon and Juan Gerbacio both resident of said jurisdiction whom

I know and accredit and the first said as an *an* agent of Don Jose Antonio Ulivarri to guarantee the sale that said Ulivarri made the said Juan Gerbacio Aragon in the canada de Cochiti of a piece of land and a house which is in the canada Cochiti and the ho-se is composed of four rooms and near the house is another room of a house which Pablo Aragon in the same ground without having more right than to the walls and the said piece of land is composed of forty-five and a half varas and the said house and lands he sold to the aforesaid Ulivarri for a price and sum of one hundred and fifty dollars current money of the land, its boundaries being on the north as far as the grant of said canada extends and on the south the river of said canada on the east the lands of Jose Lucero on the west the lands of the heirs of the deceased Ysidro Lucero that with said sum the said Ulivarri stands paid content and satisfied and that said house and land are not worth more and that if it is worth more or may be worth more he makes grant and gift of the excess in value to the said Juan Gerbacio Aragon, pure, simple, perfect and irrevocable that which the law designates *inter vivos* whereupon he renounces the laws of the *the non numerata pecunia* proof and payment those of *duobos resdebendi* and *autentica perfide* whereupon he will not bring suit nor any claim now now any time neither for himself nor for his wife nor for his heirs nor for any other person and if perchance suit claim or controversy should ensue that he will go to the protection of the purchaser at his own cost until he is left in quiet and peaceful possession of the house and land aforesaid which he has sold and the said vendor gives authority to the justices of the land and in particular to those of this jurisdiction that by all the rigor of the law they may compel and force him to the fulfilment of this deed as if it were by a definit-e sentence of a competent judge passed, tried with the authority of a thing judged agreed in and not appealed for guarantee of which he obligates and did obligates his person and any real or personal property which he now has or may have all of which the said vendor did before me the said alcalde and the witnesses of my attendance with whom I act as a commissioner judge and in order that this may appear I signed it in the well-known absence of a notary public of which there is none of and class together with the witness of my assistance on the said day month and year to which I certify.

JOSE MIGUEL BACA.

Asst.: JOSE ANTONIO SANDOVAL.
JUAN CAMPOS RELDONDE.

EL NACIMIENTO, N. M., *July* 18, 1877.

Know all men by these presents that we Florencia Lucero Manuel Aragon sold to Don Martyn Lucero a piece of land which is recited in the foregoing document and in order that it may a-pear that the said sale is just and honest we transferred to the said Lucero all the power and authority which the laws compel and therefore we obligate ourselves that if any claim or controversy should arise with respect to the said Lucero we will go to his assistance until he is

left in quiet and peaceful possession all of which we did in the presence of two witnesses.

FLORENTINA LUCERO, *Grantor.*

Witnesses:
SERAFIN PADIA.
JULIAN SEGURA.

356 PLAINTIFFS' EXHIBIT #40.

Spanish.

En este puesto de Nuestra Senora de Guadalupe de la canada de Cochiti en catorce dias del mes de enero del ano de mil setesientos sesenta y ocho ante mi el teniente del alcalde mayor Martin Gallego por sio Juan Lucero y Miguel Romero a quienes doy fee conosco y dijo dicho Juan Lucero que le bendia y le vendio a Miguel Romero une suerta de tierras que compone de quinientas y dies boras de oriente a poniente por el precio y cantidad de quatro syentos pesos y con la dicha cantidad se dio por contento y pagado y satisfecho y que sy demos balen las dichas tierras de la demacia le ase gracia y donacion pura mera perfecta irrevocable que el derecho yama inter vivos sobre que renuncia las leyes fechas en corte de alcalde de enares que trata de cosas que se benden y son sus linderos por la parte del norte con el rio por el sur sus en tradas y salidas libres por el poniente con tierras de Bernardo Ortys por el oriente con tierras de Diego Aragon y pastos y abredaderos y se las bendi con poder y facultad de mi madre y todos mis hermanos y con consentimiento de todos los ederos y moraderos de dicho partido y por si acaso susediere el que salga tercero de mejor derecho tomare la bor 4 mi costa pagandole los aumentos y mejoras nunque no sean util y nesesorio como tambien renuncia las leyes del ordenamiento rial y la ley sircumbemiere como tambiem renuncio las leyes que ablan a mi favor de justimano baleyano senatus consultos nueba y vieja constitucion con lo general del derecho y para lo asy qumpler me someto yo y mis hijos a las reales justicias de su magestad para que me apremien al cumplimiento de dicha esritura de benta real como si fuera por sentencia definitiva de jues competente con autoridad de cosa jusgada y lo otorgo el teniente de alcalde mayor en catorce dias del, es de Enero del ano de mil setessientos sesentos y ocho lo firmo con dos testigos de mi asistencia yo dicho teniente de alcalde mayo lo autue como jues resetor a falta de escribano publico real que no lo hay en este reyno y en el presente papel por no correr de ningun sello en estos partes de todo doy fee yo dicho teniente de alcalde mayor.

MARTYN GALLEGO.
JUAN LUCERO.
ANTONIO LUCERO.

Witnesses:
PEDRO ANTONIO TRUJILLO.
CALLETANO LORENZO MONTANO.

357 PLAINTIFFS' EXHIBIT No. 40.

Translation.

In this place of oor Lady de Guadalupe of the can-da de Cochiti on the 14th day of the month of January 1768 before me the deputy alcalde mayor Martin Gallego personally appeared Juan Lucero and Miguel Romero both of whom I know and accredit and the mentioned Juan Lucero said that he does and did sell to Miguel Romero a piece of land composed of five hundred and ten varas from east to west for the price and sum of four hundred dollars and with said sum he declared himself pleased paid and satisfied and that if the said lands are worth more of the excess in value he makes grant and gift pure simple perfect and irrevocable denominated by the law *inter vivos* whereupon he renounces the laws made the court of *alcalde de enores* which treats of things that are sold, and its boundaries are on the north the river on the south free entrances and outlets on the west with lands of Bernardo Ortys on the east with lands of Diego Aragon and pastures and watering places and I sold them to him with the authority of my mother and all my brothers of said place and in case I should be arbitrador I shall support him at my expenses paying him for the advancement and improvement although they may not be necessary as I renounce also the royal laws as well as the laws that speak in my favor of *justimano baleyano sematus consultos* new and old constitution with the generality of the law and to comply in the way I submot myself and my children to royal courts of His Majesty that they may compel me to the fulfilment of this deed of royal sale as if by definitive sentence passed by a competent judge, a sentence passed tried, judged and affirmed I the deputy alcalde mayor grant it on the 14th day of January of 1768 signed it with two assistant witnesses I said deputy alcalde mayor and acted with the power of delegate judge in the absence of royal notary public there being none in this kingdom and on the present paper not having any stamp in this place of all I certify the said deputy alcalde mayor.

MARTYN GALLEGO.
JUAN LUCERO.
ANTONIO LUCERO.

Witnesses:
PEDRO ANTONIO TRUJILLO.
CAYETANO LORENZO MONTANO.

358 PLAINTIFFS' EXHIBIT No. 41.

Spanish.

En este puesto de la canada de Cochiti de Nra. Sra. de Guadalupe en el dia primero del mes de setiembre de mil setecientos setenta anos parescieron ante mi el teniente de alcalde mayor Nerio Antonio Montoya, teniente de dicha jurisdicion perecio Miguel Lucero vecino

de dicha can-da de Cochiti, a quien doy fee conosco y digo que daba y dio en benta real a Miguel Romero asi mismo vecino de dicha canada de Cochiti un pedazo de tierra de pan lleva, que estan del lado del norte, las cuales tierras lindan por el sur con tierras del mismo comprador, por el poniente con tierras de Antonio Lucero, por el priente con tierras de Bernardo Ortiz, por el norte las entradas y salidas, estas tierras se las bendio por el precio y cantidad de cien pesos de la tierra, y la dicha tierra son siento beinte y cinco baras, y con los cien pesos se da por contento y satisfecho y pagado, y que si mas valen o baler puedan le ase gracia y donacion pura, mera perfecta e irrebocable que el derecho llama inter bibos renuncia las leyes de la numerara pecunia, prueba y paga, las de uuobus resdebendi y autentic perfiden y usoribus las de las man comunidad que hablaban sobre la mitad de justo precio y que se las da libres franco y general administracion y que pueda benderlas cambiarlas y enaxenarlas en la person o personas que mas bien visto le fuere y le sede y traspasa dicho Miguel Lucero la propiedad de dicho adcion y senorio que a dichas tierras tiene sobre que no le pondra pleito ni demanda el dicho Miguel Lucero ni sus herederos y susesores y que si acaso se lo pusieren que no sean oidos en juicio ni fuera de el y que saldra a la defensa asta dejarlo en quieta y pacifica posecion y da y da poder a las justicias de su magestad y en particular a las de dicha jurisdicion para que con todo rigorde derecho le compelen y aprimien al cumplimiento de esta escritura como si fuera por sentencia definitiva de jues competente pasada con autoridad de cosa juzgada, consentida y no apelada para cuyo sanemiento obliga su persona y bienes abidos y por haber renuncia la lei antigua defcha nombrada su propio fuero y vecindad, la lei sircumbeneri de yce direccione o ni nem y todas las demas que hablan in su defenda todo lo que otorgo ante mi y testigos de asistencia que interpuse mi autoridad y decreto judicial y para que conste lo firme actuando como jues receptor por falta de escribano real publico que no lo hay en este reino no firmo el otorgante porque dijo no saver lo firmo a ruego untestigo y commigo los de mi assistencia y en papel comun por no aber de ningun sello en estas pares de que doy fee.

NERIO ANTONIO MONTOYA.

A ruego y por Miguel Lucero,

JOSEPH MIGUEL DE LA PENA.

Astia.:

JOSEPH MIGUEL DE LA PENA.

FRANCISCO GALLEGO.

359 PLAINTIFFS' EXHIBIT No. 41.

Translation.

In this place of the canada of Cochiti of our Lady of Guadalupe on the 1st of September 1770 personally appeared before me the deputy alcalde mayor, Nerio Antonio Montoya, deputy of said jurisdiction, Miguel Lucero, resident of said canada of Cochiti, whom I know and accredit, and said that he gave and did give in royal

sale to Miguel Romero, also a resident of the said canada of Cochiti a piece of agricultural land, which is on the north side, the boundaries of said land on the south, with lands of the same purchaser, on the west with lands of Antonio Lucero, on the east with lands of Bernardo Ortiz, on the north the entrances and outlets, these lands he sold for the price and sum of one hundred dollars, current money of the land, and the said lands are one hunodred and twenty-five varas, and with the hundred dollars he declared himself pleased satisfied and paid, and that if they are or may be worth more, of the excess in value he made him grant and gift, pure, simple, perfect and irrevocable, which the law denominates *inter vivos;* renounces the laws of the *numerara pecunia*, proof and payment, *duobus resdebendi autentica perfiden yusoribus* those of *de la man comunidad* which speak of half of the lawful price and that he *gavies* them free of taxes and mortgage that he may enjoy them with freedom and usual control, and that he may sell, exchange and transfer them to the person or persons that may please him and gives up and transfers to the said Miguel Romero, the property, right and interest he has in the said lands and that the said Miguel Lucero will not dispute or claim it nor his heirs or successors, and if they should claim it that they may not be heard in court nor out of it, and that he will protect it until he is left in a quiet and peaceful possession and gives power to His Majesty's courts particularly to those of this jurisdiction, that he may by all the force of the law be compelled to the fulfilment of this deed, as if by definit-e sentence of a competent judge, a sentence passed, tried, judged and affirmed consented to and not appealed, for whose guarantee he binds his person or any property he has or may have and renounces the old law named his own privileges, residence, vicinity; the law *si cumbencit*, of *y sediviciones* or *ninem*, and all the others which protect him, which he granted before me and assistant witnesses and exercise my judicial authority that this may be valid I signed it acting with the power of delegate judge in the ansence of a notary royal or public, of which there is none in this kingdom; the grantor did not sign it because he did not know how to sign it; a witness signed at his request and those of my attendance with me on common paper not having any stamped of which there is none in this place, which I certify.

NERIO ANTONIO MONTOYA.

At the request of Miguel Lucero,
JOSEPH MIGUEL DE LA PENA.

Witnesses:
JOSE MIGUEL DE LA PENA.
FRANCISCO GALLEGO.

360 PLAINTIFFS' EXHIBIT No. 42.

Spanish.

Hoy 24 de Noviembre de este ano de 1837 personalmente se presentaron por sus por sus propias personas ante me Manuel Hurtado un de los jueces de paz en y por el condado de Sta. Ana. Antonio

Lucero y Patricio Lovato, a quienes conosco y doy fee y digo el primero que bendia y en efecto bendio al segundo un pedazo de tierra de pan llevan en la canada de Cochiti y que dicha tierra se compone 11 no. se varas hochenta y hocho y media varas de ancho y de largo son sus linderos el rio hasta la loma y hasta onde alcanza la merced real de la can-da por el poniente linda con tierras de Agustin Chaves, y por el oriente linda con las tierras de los erederos del difunto Jose Maria Chaves y que dicha tierra bendio por el precio de 15 pesos fuertes los que tiene recibidos a su contento y satisfacion y dice que conose que dicha tierra la bendio por dicha cantidad, y que cre que ese es su valor y que si mas valiere de la demasia le hace a su contratante gracia y donacion y que obliga todos sus bienes muebles y si muebles al saneo de dicha tierra en caso que se le ponga pleito a su contralante, por si o por sus hijos or erederos o susesores y para que este documento tubiera toda la fuerza y balidacion que por las leyes de este territorio se requieren me suplicaron que autorisara el presente que firmo en Cochiti oy el dia de la fecha arriba en la oficina de mi corte delante de dos testigos que firmaron con migo y el otorgante.

ANTONIO LUCERO, *Otorgante.*
MANUEL HURTADO, *Jues de Paz.*

BISENTE HURTADO, *Testigo.*
CRESONTO TAFOYA, *Testigo.*

361 COCHITI EXHIBIT NO. 42.

Today the 24th of November of this year of 1837 personally appeared before me Manuel Hurtado, one of the justices of the peace in and for the county of Sta. Ana. Antonio Lucero and Patricio Lovato both of whom I know and acer-dit and the first said that he did sell and in fact sold to the second a piece of agricultural land in the canada of Cochiti and that -he said land comprises eighty-eight and a half varas, square varas, its boundaries to the hill and as far as the royal grant of the said canada extends on the west with lands of Agustin Chaves on the east with lands of the heirs of the late Jose Ma. Chaves and that he sold the said land for the price of fifteen dollars in silver, which he has received to his pleasure and satisfaction and acknowledges that he sold the said land for the said price, and that he thinks that that is its value and if it is worth more he makes grant and gift of the excess in value to the purchaser, that he binds his personal*ly* property to guarantee the said land if perchance they should claim it from his purchaser by himself or his children or heirs or successors and that this deed may have all the power and validity required by the laws of this Territory, they requested me to authorize. I sign it in Cochiti today, the day of the above date, and signed it in my court-room before two witnesses who signed with me and the grantor.

MANUEL HURTADO, *Justice.*
ANTONIO LUCERO, *Grantor.*

Witnesses:
BISENTE HURTADO.
CRISANTO TAFOYA.

362 PLAINTIFFS' EXHIBIT No. 43.

Spanish. [Stamp.]

TERRITORIO DE N. M., }
Condado de Sta. Ana. }

Personalm^te^ se presentaran ante mi Manuel Hurtado uno de los Jueces de pas en y por el dho concado y territorio de N. M. y en el precinto numero primero del ante dho condado arriba dho comparecieran presentes y por sus propias personas Antonio José Hurtodo y Manuel Montaño á quienes conosco personalm^te^ y doy fee y dijo el primero que vendia y en efecto vendió al segundo un pedaso de tierra en la cañada de Cochiti el ceral se compone de dies y seis varas y media en ancho y en largo por el lado del norte hasta donde resa la merced Real de la cañada y amas dijo el dho vendedor que la citada tierra la ubo por herencia de su finado padre Antonio Hurtado y que cesta situada entre las tierras de los herederos del finado Miguel Urtado su abuelo y que la vendio con su espotanea voluntad sin compulsion ó violencia alguna por la suma de cuatro pesos en dinero y por lo tanto para que este traspaso no caresca de legitimidad en favor del interesado declaro y certifico y firmo yo el infrascrito jues con dos testigos y el otorgante en la oficina de mi corte en Cochiti en N. M. hoy 10 de Enero de 1868.

ANTONIO JOSÉ HURTADO, [R.]
Ortorgante.
MANUEL HURTADO, [R.]
Jues de Paz.

ATILANO LIEVA, [SELLO.]
JUAN JOSÉ ORTEGA, [SELLO.]
Testigos.

363 PLAINTIFFS' EXHIBIT No. 43.

Translation.

TERRITORY OF NEW MEXICO, }
County of Sta. Ana. }

Personally appeared before me Manuel Hurtado one of the justices of the peace of the above-mentioned county and Territory of New Mexico and pred*i*nct No. 1 of the above-mentioned county Antonio Jose Hurtado and Manuel Montano both of whom I know personally and accredit, and the first said that he did sell and in fact sold to the second a piece of land in the canada of Cochiti which is composed of sixteen and a half square varas on the north as far as the royal grant of the canada extends, and moreover the sa-d vendor said that he acquired the same as an inheritance from his late father Antonio Hurtado, and that it is situate between the lands of the heirs of the late Miguel Hurtado, h-s grandfather, and that he sold it of his own free will without any compulsion or violence, for

the sum of four dollars cash, and therefore that this deed may not lack legality in favor of the party interested I declare and certify. I the undersigned justice of the peace sign it with two witnesses and the grantor in my court-room in Cochiti of New Mexico today 10th of January, 1868.

ANTONIO JOSE HURTADO, *Grantor.*
MANUEL HURTADO,
Justice of the Peace.

Witnesses:
ATILANO SILVA.
JUAN JOSE ORTEGA.

364 PLAINTIFFS' EXHIBIT No. 44.

Translation.

Know all men by these presents: that *I* Jose Juan Lucero and Maria Josefa Roival residents of the canada of Cochiti, Territory of New Mexico, county of Santa Ana that in and for the consideration of having exc*a*h*a*nged with Eusebio Aragon and his wife Maria Encarnacion Gonzales a tract of land composed of forty varas wide which is from east to west remaining in our favor what remains of forty varas, for a road l*ea*ding from the mill for a road which is in length from north to south are by the west 171 by the east 152 v*q*ras and the boundaries of said land are on the east with lands of said Eusebio Aragon and on the west with said remaining land that is left us for a road, and on the north with our lands and on the south with the commons or public lands as far as the royal grant of La Candada and in evidence of which we acknowledge that we have exchanged for other forty varas of land down below to us delivered and sold by ourselves we have sold contracted and conveyed and by the present we convey to the said Eusebio Aragon and wife their heirs assignees or legal representatives the described real property together with all the privileges to which they belong and may be their own said property is free of all encumbrances or mortgage and we have the right to dispose of it and that the said Eusebio Aragon his heirs or legal representatives claim, live and possess forever peacefully said property, that by virtue of this contract it agrees together with all the privileges that to them belong and therefore we assure neither I nor my wife, Jose Juan Lucero and Maria Josefa Roival my heirs administrators and executors that we shall protect the said property at all times against any legal claims or claim of any person or persons who may pretend to restrain said Aragon in the free use of said property.

In witness whereof we affix our names and seals at the canada of Cochiti, N. M. this 17th day of May, 1874.

JOSE JUAN LUCERO. [SEAL.]
MARIA JOSEFA ROIVAL. [SEAL.]

MANUEL HURTADO Y GALLEGOS, [SEAL.]
JOSE ANTONIO SANDOVAL, [SEAL.]
Witnesses.

TERRITORY OF NEW MEXICO, }
County of Santa Ana. }

Before me the undersigned justice of the peace of precinct No. 1 of Dona Ana county Territory of New Mexico, personally appeared Jose Juan Lucero resident of said precinct and county, whom personally I know, and said that he with his full consent sold and exchanged, *e*he and his wife, Maria Josefa Roival and transferred to Eusebio Aragon the forty varas of land that may appear in the above documents.

And furthermore I the undersigned justice of the peace declare and certify that acting in conformity with the law of transfers of real property in the presence of Manuel Hurtado y Gallegos and Jose Antonio Sandoval witnesses who declare to equally know the grantors and examination was made by my court to the said Lucero and Roival who answered in the affirmative that the exchange and transfers that above appears that was executed with their free will without any compulsion or force by any person and therefore that this transfer may not lack in legality in favor of the person concerned I do sign it, the said justice with the mentioned witness- this 17th day of March, 1874.

____ ____,
Justice of the Peace.

365 PLAINTIFFS' EXHIBIT NO. 45.

In this place of our Lady of Guadalupe of the can-da of Cochiti on the 28th day of June, 1783, personally appeared before me Don. Antonio Gallego deputy alcalde mayor and captain of war of this place and its jurisdiction Juan Epomuceno Lucero resident of the town of San Felipe of Albuquerque whom I know and accredit and said that he gave and did give in royal sale to Juan Domingo Salas, resident of said canada of Cochiti a piece of agricultural land which is situated in said canada composed of seventy-one and a half varas on both sides of the river of said canada whose boundaries are on the east with lands of Juan Ygnacio Salas on the west with lands of Jose Antonio Lucero brother of said vendor on the north entrances and outlets free on the south the same entrances and outlets free as far as the royal grant for the price and sum of seventy-one and a half dollars current money of the land with which sum he declared himself to be pleased paid and satisfied and that if it is or may be worth more of the excess in v-lue he makes grant and gift to the said Juan Domingo Salas pure simple perfect and irrevocable denominated by the law *inter vivos* whereupon *the* renounces the laws of the *non numerata pecunia* proof and payment those of *duobus resdevendit y autentica perfide, sonsibus* and those of *laman comunidad* which reads of half of the lawful price and that he gives them free of taxes assessment and mortgage that he may enjoy them with freedom and general control and that he may sell, exchange or transfer to the person or persons he may see fi- and cedes and transfers to the said Juan Domingo Salas the property right share

and ownership which he had in said land and that he will not dispute or claim it the said Juan Epomuceno Lucero nor his children heirs nor successors and in case they should dispute or claim it that they may not be heard in court nor out of it and that he will protect him until he is left in a quiet and peaceful possession and empowers the courts of His Majesty and particularly those of this jurisdiction that he may with all the rigor of the law be compelled and forced to the fulfilment of this conveyance as if it were definit-e sentence of a competent judge a sentence passed tried judged and affirmed for whose guarantee he binds his person and property he has or may have renounces the old law which made that his privilege habitation and vicinity may not be valid the law *circumbeniente* of jurisdiction *onitem vedicum* and all others in his favor and protection. All of which he granted before me and assistant witnesses and I interposed my authority and judicial right and in evidence I signed it acting as a commissioned judge in the absence of a royal notary of which there is none in this kingdom and on common paper not having any stamped in said kingdom. The grantor did not sign because he said he did not know how to sign and Cayetano Montano signed it at his request, which I certify.

ANTONIO GALLEGO,
At the Request and for Juan Lucero.

Witnesses:
JUAN PEDRO ARCHULETA,
—— ——, *Maes.*

366 PLAINTIFFS' EXHIBIT NO. 46.

Spanish.

TERITORIO DE NUEVO MEXICO, }
Condado de Santa Ana. }

How 13 de Marzo de 1855 fueron presentes personalemte ante mi uno de los Jueses de Paz y por el condado de Santa Ana Santiago Giron y Maria Rosalia Ortega vecinos de este Demarcacion a quiene doy fe conosco y dijo el primero que traspasaba y con efecto traspaso en la segunda toda su ancion derecho Senorio y besindad por el precio y cantidad de once pesos fuertes con cuya cantidad dijo Giron quedaba pagado contento conformo y satisfecho y dijo tambien el espresado Giron que dicho documento y terrno que en el costa lo hubo por herencia de su finado padre y que no bale mas dicho terreno que la ha bendido y que si mas bale o baler pueda le hace gracia y donacion de ella a su compradora y que no le pondra pleito demanda no contradicion alguna ahora ni en ningun tiempo ni por si ni por su muger no hijo ni ederos ni ninguna otra persona y que en caso que se le ponga que saldra a la defensa a su costa hasta dejar en quieta y pacifica posecion a su compradora del terreno que le a bendido y para que este traspaso tenga la balidacion que le requiere me suplico pusiere mi decreto judicil y yo dicho Juez dijo que ponia e interpuse cuanto por la ley me es conferido en dicho dia mes y ano de que me refirco y doy fee.

ALCINO ARAGON,
Juez de Paz.

367 PLAINTIFFS' EXHIBIT No. 46.

Translation.

TERRITORY OF NEW MEXICO, }
County of Santa Ana. }

Today 13th of March 1855 personally appeared before me Alvino Aragon a justice of the peace in and for the county of Santa Ana Santiago Aragon, and Ma. Rosalia Ortega, residents of this district, both of whom I know and accredit and the first said that he did transfer and in fact transferred to the second all of his share right ownership and vicinity for the price and cum of eleven dollars silver, which sum paid Giron declared himself to be paid pleased suited and satisfied and said Giron said also that said document and lands that in it appears he had by inheritance of his late father and that said lands he has sold her are not worth more and that if they are worth or may — worth more of the excess in value he makes grant and gift to his purchaser that he will not dispute nor claim it now nor at any other time neither by himself nor his wife children nor heirs nor any other person, and if they should claim or dispute it that he will support her at his expenses until his purchaser is left in a quiet and peaceable possession of the land he has sold her, and in order that this transfer may have the legality required requested me to interpose my judicial law, and I said justice of the peace said that I would interpose and did interpose it all which by law is conferred upon me, on said day month and year which I refer to and certify.

ALVINO ARAGON,
Justice of the Peace.

368 PLAINTIFFS' EXHIBIT No. 47.

Spanish.

En este puesto de Nuestra Senora de la Sanada de Cochiti beinte y tres dias del mes de Noviembre de mil setecientos y ochenta anos ante mi Pedro Antonio Trujillo teniente de alcalde mayor de dicho puesto parecio Antonio Archuleta besino de dicho puesto a quien doy fee conosco y dijo que daba u dio en benta real Antonio Joseph Lovato tambien becino del meniconado puesto un pedaso de tierra de labor en dicho puesto que se compone por la parte del norte al pio de la loma setente y seis varas y tres cuartos y por la parte del rio corresponde noventa y cuatro varas cullos linderos son por el oriente linda con tierras, de Juliana Tafoya y por el norte entradas y salidas libres y por el poniente linda con tierras de Gregorio Apodaca y por el sur linda son el rio de dichi canada por el precio y cantidad de ciento y un peso de la tierra de cuya cantidad se da por contento y pagado y que si mas balen o valer puedan le hace gracia y donacion al dicho Antonio Joseph Lovato pura mera per-

fect irrevocable que el derecho llama inter vivos sobre que renuncia les leyes de la numerata pecunia prueba y paga los de deubos resdevendis y autentica perfide rusorebus las leyes de la man comunidad que ablan sobre la mitad del justo precio que se las da libres de senso tributo y poteca para que las goze con libres y franca general administracion y que pueda venderlas cambiarlas y enagenarlas en la persona o personas que mas bien biste le fuero y le sede y traspaso a dicho Joseph Lovato la propiedad derecho aision y Senorio que a dichas tierras tenio sobre que no le pondra pleito ni demanda el dicho Antonio Archuleta ni sus hijos erederos y successores y que acaso se lo pucieren que no sean oidos en juicio nu fuera del y que saldra a la defensa hasta dejarlo en quieta y pacifica posecion y da poder a las reales justicias de mi majestad y en particular a las de esta jurisdicion para que con todo rigor de derecho le compelen y apremien a; cumplimiente de esta escritura como si fuera por sentencia definitiva de jues competente pasado en cosa jusgada y no apelada para cuyo sanenmiento abliga su persona y bienes habidos y por haber renuncia la ley antigua hecha no balga su propio fuero domicilio y besindad la lay circumbeniente jurisdicion oneri tanur y todas las demas de su favor y defensa todo lo cual otorgo ante mi y testigos de asistencia que interpuse mi autoridad y decreto judicial para que costa lo firmo autuando como Jues receptor por la notario falta de escribano publico real que no lo hay de ninguna clase en esta gobernacion y vaen papel comun por no haberlo de ningun sello e dicho reyno no firmo el otorgante por no saber firmor firmole un testigo de que doy fee.

PEDRO ANTONIO TRUXILLO,
A Ruego y por Antonio Archuleta.

Testigo:
JUAN MAILLAS BARELA.
ANTONIO TAFOYA.

369 PLAINTIFFS' EXHIBIT No. 47.

Translation.

In the place of our Lady of Guadalupe of the Canada de Cochiti on the 23rd day of November 1780, personally appeared before me Pedro Antonio Trujillo deputy alcalde mayor of said place Antonio Archuleta resident of said place whom I know and accredit and said that he gave and did give *to*, in royal sale to Antonio Joseph Lovato also resident of same place a piece of agricultural land in said place which is composed on the north to the foot of the hill seventy-six and three-fourths varas and on the side of the river ninety-four varas whose boundaries are on the east with lands of Julian Tafoya and on the north free entrances and outlets and on the west with lands of Gregorio Apodaca and on the south with river of the said canada for the price and sum of — hundred and one dollars current money of the land with which sum he declared himself to be pleased and paid and if it is worth or may be worth more of the excess in value he makes grant and gift to said Antonio Joseph

Lovato pure simple perfect and irrevocable denominated by the law *inter vivos* whereupon he renounces the laws of the *non numerata pecunia* proof and payment those of *deubos resdebendit y autentica perfide* which treat of half of the lawful price and that he gives them free of taxes assessments and mortgage that he may enjoy them with freedom and general control and that he may sell exchange and transfer them to the person or persons he may see fit, and cedes and transfers to said Antonio J. Lovato the property right share and ownership which he had in said land and that he will not dispute nor claim them the said Antonio Archuleta nor his children heirs and successors and in case any person should claim or dispute them that they may not be heard in the court nor out of it, and that he will protect him until he is left in a quiet and peaceable possession and empowers the royal courts of His Majesty and particularly to those of this jurisdiction that he may with all the rigor of the law be compel-ed and forced to the fulfilment of this conveyance as if it was by definitive sentence by a competent judge sentenced passed, tried, judged and affirmed, for whose guarantee he binds his person and property he has or may have renounces the old law made that his own privilege habitation vicinity may not be valid the law *circumbemiente jurisdiction ontre fam* and all the others that may be in his favor and protection all of which he granted before me and assistant witnesses and interposed my authority and judicial law and in evidence I sign it acting as treasurer judge in the absence of royal notary public which there is none in the province and in common paper not having any stamped in said kingdom and the grantor did not sign it because he said he could not write *a* witnesses signed it which I certify.

PEDRO ANTONIO TRUXIO,
At the Request and for Antonio Archuleta.
JUAN MATILLAS BARELA.

Witnesses:
ANTONIO TAFOYA.

369½ And be it remembered that afterwards, to wit, on the 29th day of September, A. D. 1894, an opinion was filed in the said cause; which said opinion is in the words and figures following, to wit:

370 In the Court of Private Land Claims, Santa Fé District.

JOEL P. WHITNEY *et al.*, Plaintiffs,
vs.
THE UNITED STATES, Defendant.
} No. 205. Cochiti.

Opinion.

The question chiefly pressed upon our attention in this case is as to the true location of the north and west boundaries of the land claimed.

The plaintiffs set up a grant alleged to have been made by Bus-

tamante, governor of the province of New Mexico, August 2nd, 1728.

The original grant document consists of the petition for *for* the grant by Antonio Lucero and an endorsement thereon alleged to be by the authority of the governor granting the land prayed for. The document is very badly mutilated, so much so that the signature of the governor, if it ever appeared upon the document, is gone.

The tract of land for which Lucero asked a grant is described in this mutilated original petition as follows:

"* * * cel of land * * * at the mesa of Cochiti to where the Indians who rebelled retreated, to plant thereon, and the said piece of land will contain about ten fanegas of wheat and two of corn, and to pasture my sheep and horse herd; and the
371 said land is bounded on the north by the old pueblo of Cochiti, and on the east by the Del Norte river, and on the south by the natives of said pue * * * the west with * * * of Jemez."

The question as to the northern boundary arises from the fact of the existence of two old Indian pueblos in the vicinity. One of these pueblos is situated on what is known as the mesa of Cochiti, at which the tract of land asked for was described as located, and one is situated about seven miles northeast of the mesa mentioned. The plaintiffs claim the northern pueblo as indicating the north line and the Government claims the southern one as indicating the line.

An uncertainty arises as to the west line from the description of it in the original petition for the grant, which is "the west with * * * of Jemes." The plaintiffs claim that this means the top of the main ridge of the Jemez mountains, which are several miles west of the mesa of Cochiti.

There has been introduced in evidence a document from which it appears that on December 30, 1817, the chief alcalde of the jurisdiction of Cochiti undertook to restore the old mutilated grant documents to their original condition, with the governor's name attached, and describing the west boundary of the tract as the Jemez mountain.

We are of the opinion that this proceeding of the alcalde was wholly void. It is contended that the alcalde was a judge having jurisdiction similar to that exercised by courts of chancery and had authority to entertain a proceeding to restore these muniments of title. We are unable to find any provision of the law of Spain upon which such contention can be based. Such a proceed-
372 ing, in the very nature of the case, was against the Crown, and the effect of it would be to create evidence to deprive the Crown of title to its land. Alcaldes had no jurisdiction of any proceeding against the Crown and could not by any act of theirs, without express authority in the particular case, affect the title to Crown land. Therefore the certificate of the alcalde is not to be taken as any evidence of what the grant document originally recited as to the west boundary. Not being evidence against the

Crown of Spain, it is not evidence against the United States now. We are aware of but one way by which the document could have been legally restored, and that was by the act of the granting power, and the archives show that it was not unusual for the governor of the province to restore and revalidate grants under like circumstances.

The circumstantial evidence in the case is not sufficient to satisfy us that the west line of the grant was intended to be the main range of the Jemez mountains. We do not feel justified in reading the document inserting the word mountain.

The original may or may not have contained that word. The case is not aided by evidence of practical location. There is some evidence to the effect that the stock of the descendants of Lucero grazed as far west as the Jemez mountains, but practical location means the acts of the parties to the instrument and not the acts of parties generations distant from them. Moreover, from a practical standpoint the grazing of stock in this country has no value as evidence of practical location.

There was also evidence that the west boundary was reputed to be the Jemez mountain; but when we consider that this repute was based upon the void certificate of the alcalde and not upon
373 facts of actual occupancy it fails of convincing force. In view of all the evidence we can only be certain that the west boundary was so located as to include the particular parcel of land specified by Lucero in his petition as located at the mesa of Cochiti; and from all the circumstances we are satisfied that it was not the intention that this grant should include any of the country lying west of the cañon of Cochiti.

As above stated, the petition specified as the north boundary the old pueblo of Cochiti. The question is which pueblo was meant. The language of the petition is significant. The point of identification of the tract asked for is the mesa of Cochiti. Here, then, is a mesa which has a well-understood name, which it has derived from the association of some fact or circumstance. Its north side forms the wall of a cañon, through which flows a stream, both bearing the same name of Cochiti. Upon this mesa was situated an old pueblo. Lucero's petition states that to that place the Indians retreated when they rebelled—that is, they went to that place to reside during their insurrection. History informs us that it was the Cochiti Indians who resided there, and that one of the most interesting and prominent facts of New Mexican history occurred upon that same mesa—within that same old pueblo—in relation to the Cochiti Indians, namely, the final overthrow of the Indians on the reconquest of New Mexico. It was this fact, then, which gave names to the mesa and the cañon and the stream, and how could it fail to impart the same name to the pueblo? History as well as the evidence in this case shows that it did so. The evidence shows that the point at which Lucero actually located, in pursuance of the grant, is considerably south of the line of the old pueblo, and that nearly if not quite all of the land which has been occupied by cul-

tivation by his descendants and successors during the century
374 and a half intervening from that time to the present lies south of such a line. When Lucero made his petition for this grant he seems to have stood in the flats of Albuquerque and not upon the heights of the Cochiti mesa, overlooking the distant Pueblo Viejo, as counsel for plaintiffs supposes. With the tract of land he sought and described he associated in his mind the mesa and the cañon and the stream, and it was but natural that he should also associate with them the old pueblo, which was the very thing which gave all of them prominence and distinction.

It was not unnatural that he should fix the line of the old pueblo on the mesa as the north line of the land he was describing. We think it would be a strained and unreasonable conclusion to say that in his mind he disassociated all these things from the pueblo on the mesa and associated them with the ruins of the Pueblo Viejo, of the existence of which there is no evidence he had any knowledge, either actual or historical; but there is another standpoint from which this question must be viewed. There was another mind beside Lucero's involved in this transaction, and that was the mind of the governor. It required the assent of both minds in order to consummate this grant. At the time Lucero's petition was presented to the governor only thirty-four years had elapsed since the bloody and decisive tragedy enacted in the pueblo on the Mesa Cochiti. The whole history of it from the pen of De Vargas was in the archives under his own hand and custody. We must believe that the event and the place were as familiar to him as are any of the important events and places of our own civil war to us. When this petition was presented to the governor, grouping as it did in close association the mesa and the pueblo as land-
375 marks by which he was to determine the propriety of making this grant, is there reason to say that in his mind he disassociated the mesa from the pueblo standing upon it and associated it with another of which there was no suggestion in the petition? We cannot bring our minds to such a conslusion. On the contrary, the conclusions seems irresistable, in view of the circumstances, that when the governor inspected that petition he had no other thought than that the old pueblo of Cochiti, situated on the Mesa Cochiti, was intended as the north boundary. If Lucero really intended to make the northern pueblo the monument of his north line, then we must say that his petition was positively misleading to the governor. There was evidence that by general repute the north boundary was located at the northern pueblo spoken of in the case as the Pueblo Viejo.

Evidence of general repute as to the location of a boundary is entitled to consideration. The general repute proven in this case, in its source and in its extent, was confined to the descendants and successors of the original grantee, chiefly the owners of the grant, and interested in the expansion of its limits. Under such circumstances we cannot regard this evidence of much convincing force.

The record of some proceedings before an alcalde in 1785 in which he undertook to determine the superiority of right between

the Luceros and some cavalry officer to pasture stock in the Canada de en Medio, the alcalde recites in effect that the Luceros are owners of the tract under a grant and have a better right to the pasture in question than the cavalry. It is claimed for this proceeding that it shows that the Luceros were the owners of the Canada de en Medio under the grant, which, being north of the line
376 of the pueblo on the Mesa Cochiti, justifies the conclusion that that pueblo was not the one intended as the north boundary.

To have any effect as evidence, this proceeding of the alcalde must be considered in the light of an adjudication against the Crown or as an admission binding upon the Crown.

We have stated our opinion that an alcalde could not adjudicate upon the right of the Crown to its land.

We think it equally clear that an alcalde could not perform any act which could be regarded as an admission against interest by the Crown.

To authorize an agent or officer to bind or create evidence against his principal affecting the title to property, it must appear that he was authorized to effect the same purpose by direct action. Alcaldes had no power to in the least extent dispose of the public lands of the Crown. They could neither grant nor adjudicate nor admit away the title of the Crown to any portion of its public land. We cannot consider these proceedings of the alcalde as evidence in the case.

The claim will be confirmed in the name of the original grantee, Antonio Lucero, for the benefit of all parties in interest. The east boundary will be the River Del Norte; the south boundary will be the line of the Indian lands; the north boundary will be the old pueblo of Cochiti, on the Mesa Cochiti, and the west boundary will be the same pueblo. This conclusion is the unanimous opinion of the court.

H. C. SLUSS,
Associate Justice.

376½ And be it further remembered that afterwards, to wit, on the 29th day of September, A. D. 1894, the same being the 39th day of the August term, A. D. 1894, the following farther proceedings were had in the said cause, to wit:

Decree.

377 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims of the United States, Santa Fé District, Territory of New Mexico, August Term, A. D. 1894.

Present: Hon. Joseph R. Reed, chief justice, and also all the honorable associate justices.

JOEL PARKER WHITNEY, JOSE JUAN LUCERO, LAURIANO Lucero, Juan Cristoval Lucero, Jose de Jesus Lucero, Juan Teodoro Lucero, Jose Telesforo Lucero, Bernard S. Rodey, and Hannah Harris, Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent. } No. 205.

MANUEL HURTADO and JOSE ANTONIO GALLEGOS, Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent. } No. 240.

The two above-entitled causes, numbered respectively 205 and 240, having been duly consolidated and brought on for trial together upon the respective petitions therein filed in this court and upon the answer of the defendant, The United States of America, the petitioners in cause number 205 being represented by their counsel, John H. Knaebel, Esq., and the petitioners in cause number 240 being represented by their counsel, N. B. Laughlin, Esq., and the United States of America being represented by Hon. Matt. G. Reynolds, United States attorney, and the said causes having been submitted on said petitions and answers and the proofs and exhibits, both oral and documentary, and arguments of the respective counsel therein, and the court being sufficiently advised in the premises, it is therefore found, declared, adjudged, decreed, and determined by the court:

First. That the petitioners above named have and hold such derivative interests in the claim mentioned in their petitions under Antonio Lucero, the original grantee of the grant known as the Canada de Cochiti, as entitle them respectively to prosecute
378 their petitions in this court for the confirmation of the said grant.

Second. That on the second day of August, in the year 1728, the King of Spain, by Don Juan Domingo de Bustamante, his governor and captain general of the royal province of New Mexico, upon the petition of Antonio Lucero, made to him a grant of a certain tract of land situate in said province, the same now lying and being in the county of Bernalillo, in the Territory of New Mexico.

Third. That, pursuant to the terms of said grant, the said Antonio Lucero received possession thereof, holding and claiming the same under and by virtue of said grant, and that he died seized and pos-

sessed of the same, and that it descended to his heirs-at-law, who, with their assigns and legal representatives, thenceforth continued, under the same claim of title, the said possession and occupation up to and after the cession of New Mexico to the United States of America.

Fourth. The court therefore settles and determines that the said grant be, and the same is hereby, confirmed, and decrees the location, boundaries, and area of the same as follows, to wit: Said grant of land is bounded on the north by the old pueblo of Cochiti, which is situate on the mesa of Cochiti, on the south side of the canada of Cochiti, which point is about eight thousand one hundred and ninety feet in a northerly direction from the northwest corner of the lands of the Indians of the pueblo of Cochiti, as the same has been fixed and determined by the survey and patent of the same by the United States of America; on the east by the Rio del Norte (otherwise called the Rio Grande); on the south by the lands of the Cochiti Indians, as the same has been fixed and located by the survey and patent thereof to the Indians of the pueblo of Cochiti by and under the authority of the United States of America, and on the west by the same old pueblo first above referred to as the northern boundary of the grant hereby confirmed, which said grant of lands contains in area about five thousand acres of land.

Fifth. That the said private land claim is entitled to confirmation in the name of the original grantee, Antonio Lucero, for the use and benefit of all parties in interest claiming by, through, or under him under the same title.

Sixth. That said grant has not been heretofore confirmed
379 in whole or in part by the Congress of the United States of America or otherwise lawfully decreed upon or adjudicated by any lawful authority of the United States of America.

Seventh. That the title and claim of the said grant of land within the boundaries herein set forth founded on the said grant is a good and valid claim to the said land under the treaty between the United States of America and the Republic of Mexico, known as the treaty of Guadalupe Hidalgo, and under the laws and ordinances of the governments of Spain and Mexico, and the title thereto is hereby established and confirmed to the said Antonio Lucero, the original grantee, and his heirs, assigns, and legal representatives, but the said confirmation shall only be deemed as a quitclaim or relinquishment on the part of the United States of its interest in the premises, and shall not confer any right or title to any gold, silver, or quicksilver mines or minerals of the same except so far as may be otherwise provided by law, and also excepting from this confirmation any part of the said lands that may have been sold or disposed of by the United States of America.

Eighth. And the petitioners, Joel Parker Whitney and all others, having prayed for an appeal from the foregoing decree to the Supreme Court of the United States, it is ordered that the said appeal be, and the same is hereby, allowed.

Dated on this the 29th day of September, A. D. 1894.

THOMAS C. FULLER,
Associate Justice Court of Private Land Claims.

379½ And be it further remembered that afterwards, to wit, on the 29th day of September, A. D. 1894, there was filed in the office of said clerk a petition for an appeal and allowance thereof in the said cause; which said petition and allowance of appeal are in the words and figures following, to wit:

380 In the Court of Private Land Claims of the United States.

JOEL PARKER WHITNEY *et al.*
vs.
THE UNITED STATES. } (No. 205.)

MANUEL HURTADO *et al.*
vs.
THE UNITED STATES. } (No. 240.)

Consolidated cases.

The Canada de Cochiti Grant.

The above-named petitioners, Joel Parker Whitney and others, conceiving themselves aggrieved by the decision and decree entered on the 29th day of September, 1894, whereby the north boundary of the Canada de Cochiti grant is decreed to be the old pueblo on the mesa of Cochiti instead of the old pueblo on the Potrero de las Vacas, as claimed by the petitioners, and whereby the west boundary of the said grant is decreed to be the same old pueblo on the mesa of Cochiti instead of the Sierra de Jemez, as claimed by the petitioners, do hereby appeal from the said decision and decree to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which the said decision and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

JNO. H. KNAEBEL,
Attorney for Joel Parker Whitney.

And now, upon the petition for an appeal in the above-entitled cause being filed and presented in open court, the defendant, The United States of America, by Matt. G. Reynolds, Esq., its attorney, being present and appearing thereto, it is ordered that the appeal be, and the same hereby is, allowed as prayed for.

THOMAS C. FULLER,
Associate Justice, Presiding.

380½ And be it further remembered that afterwards, to wit, on the 29th day of September, A. D. 1894, there was filed in the office of the said clerk a citation in the said cause; which said citation is in the words and figures following, to wit:

381 THE UNITED STATES OF AMERICA:

To the United States and Matt. G. Reynolds, Esq., its attorney:

You are hereby cited to appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the thirtieth

day of November, 1894, pursuant to an appeal allowed by the court of private land claims in a cause wherein Joel Parker Whitney and others are petitioners and The United States of America is defendant, to show cause, if any there be, why the decision and decree in the said appeal mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this first day of October, 1894.

THOMAS C. FULLER,
Associate Justice of the Court of Private Land Claims of the United States, Presiding in the Absence of the Chief Justice.

Due service of the foregoing citation upon me acknowledged this first day of October, 1894.

MATT. G. REYNOLDS,
Attorney for the United States.

381½ And be it further remembered that afterwards, to wit, on the 29th of September, A. D. 1894, there was filed in the office of said clerk in the said cause a bond; which said bond is in the words and figures following, to wit:

382 Know all men by these presents that the undersigned, Joel Parker Whitney, as principal, and John H. Knaebel and Arthur Knaebel, as sureties, are held and firmly bound unto the United States of America in the penal sum of five hundred dollars; for the payment of which, well and truly to be made, we bind ourselves and our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated this first day of October, A. D. 1894.

Conditioned that whereas the said Joel Parker Whitney, with others, has taken an appeal from the decision of the court of private land claims of the United States in the case of Joel Parker Whitney and others against The United States of America (number 205), with which is consolidated the case of Manuel Hurtado and others against the said United States (number 240), to the Supreme Court of the United States:

Now, if the said appellants shall prosecute the said appeal without delay and with effect and pay all costs that may be adjudged against them upon the said appeal, then this obligation shall be void; otherwise the same shall remain in force.

JOEL PARKER WHITNEY, [RUBRIC.]
By JNO. H. KNAEBEL, *His Attorney.*
JNO. H. KNAEBEL. [RUBRIC.]
ARTHUR KNAEBEL. [RUBRIC.]

Approved.
THOMAS C. FULLER,
Justice Court of Private Land Claims.

382½ And be it further remembered that afterwards, to wit, on the 29th day of September, A. D. 1894, there was filed in the office of the said clerk in the said cause an assignment of errors; which said assignment is in the words and figures following, to wit:

383 In the Court of Private Land Claims of the United States.

JOEL PARKER WHITNEY *et al.*, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee. } Nos. 205 and 240, Consolidated.

Assignment of Errors.

Now comes Joel Parker Whitney *et al.*, appellants in the above-entitled cause, and say that in the record and proceedings of the court of private land claims of the United States therein there is manifest error in this, to wit:

(1.)

In deciding that the north boundary of the Canada de Cochiti grant is a ruin or old pueblo situate on the mesa of Cochiti, whereas in truth the said north boundary is a ruin or old pueblo situate many miles northeast from the said mesa, to wit, the "Pueblo Viejo," on the Potrero de las Vacas.

(2.)

In deciding that the west boundary of the said grant is the same ruin or old pueblo situate on the mesa of Cochiti, whereas in truth the said west boundary is the Sierra de Jemez, being the same sierra or range of mountains on the westerly slope of which the Ojo de San Jose grant, confirmed by the said court of private land claims, is located.

(3.)

In rejecting the grant title papers as copied and authenticated by the alcalde, Juan Antonio Cabeza de Baca, and denying to them any efficacy as evidence tending to establish the boundaries of the said grant.

384 (4.)

In rejecting the judicial order or decree made by the alcalde, Antonio de Armenta, and denying the same to be evidence tending to establish the said grant and its boundaries.

(5.)

In failing duly to consider the evidence tending to show the practical location of the said boundaries.

(6.)

In failing to decide that the said grant is bounded on the north by the Pueblo Viejo, situate on the Potrero de las Vacas; on the

east by the Rio del Norte (or Rio Grande): on the south by the lands owned at the date of the grant by the Indians of Cochiti, and on the west by the Sierra (or mountain range) of Jemez, and in failing to confirm the said grant to the full extent of the said boundaries and to the full extent of its area as described in the petition of Antonio Lucero to the governor and captain general.

Wherefore, and for other errors manifest upon the face of the said record, the said appellants pray that the decree of the said court of private land claims in the premises be modified and corrected, and that the claim of the appellants and of those in like interest to the land described in the original petition in this cause, as prayed for in the said petition, may be recognized and confirmed by the decree of the Supreme Court of the United States as to the said court may seem meet.

Dated Santa Fé, Oct. 1, 1894.

JNO. H. KNAEBEL,
Attorney for Joel Parker Whitney et al., Appellants.

384½ And be it further remembered that afterwards, to wit, on the 8th day of November, A. D. 1894, there was filed a stipulation in the office of the said clerk in the said cause; which said stipulation is in the words and figures following, to wit:

385 In the United States Court of Private Land Claims.

JOEL PARKER WHITNEY *et al.*
vs.
UNITED STATES OF AMERICA.

Consolidated cases Nos. 205 and 240.

Canada de Cochiti Grant.

In order to avoid unnecessary clerical labor and unnecessary expense of printing of the appeal herein, it is hereby mutually stipulated as follows:

(1.) That the printed volume of Professor Bandelier's work adduced by the United States as evidence on the trial be returned to the Supreme Court as part of the transcript, and may be read on the hearing of the appeal without any reprinting thereof.

(2.) That it is admitted that all the petitioners by their proofs showed sufficient proprietary interest in the subject-matter of this litigation to entitle them to present and prosecute their petitions herein, and also that, instead of copying *in extenso* the deeds of conveyance in evidence, wherein James G. Whitney or Joel Parker Whitney appears as grantee, the clerk may return, as part of his transcript, an abbreviated reference thereto.

MATT. G. REYNOLDS,
U. S. Attorney.
JNO. H. KNAEBEL,
Attorney for Petitioners and Appellants.

386 And pursuant to the said stipulation the following abbreviated reference to the said deeds of conveyance is herewith returned as part of this transcript—that is to say:

The said deeds of conveyance are all duly acknowledged and recorded, and their dates respectively are all embraced within the years 1881, 1882, and 1884, and they are numbered from 1 to 24, inclusive, and from 26 to 53, inclusive, 53½, and from 54 to 65, inclusive.

And they severally purport to convey undivided shares and interests in the Canada de Cochiti grant, in the county of Bernalillo, Territory of New Mexico, describing the said grant by metes and bounds.

Those numbered from 1 to 24, inclusive, and from 25 to 35, inclusive, and from 62 to 64, inclusive, are made to James G. Whitney as grantee by grantors as follows: No. 1, by Jose Mariano Lucero; No. 2, by Domingo C. de Baca and Rosalia Garcia, his wife; No. 3, by Guadalupe Hurtado; No. 4, by Manuel Aragon; No. 5, by Pedro Martinez and Maria Andrea Gonzales, his wife; No. 6, by Florencio Sandoval; No. 7, by Manuel Aragon y Lucero; No. 8, by Ramon Salazar; No. 9, by Quirino Lucero; No. 10, by Manuel Martin and Maria Carmel Sanchez, his wife; No. 11, by Proto Aragon; No. 12, by Manuel Aragon; No. 13, by Mauricio Mestas; No. 14, by Francisco Baca and Florentia Lucero, his wife; No. 15, by Jose Marcelo Lucero and Petra Jiron, his wife; Casimiro Lucero and Valentina Roival, his wife; Tomas Lucero and Valeria Gonzales, his wife; Sencion Montano and Felipa Lucero, his wife; Felipe Gonzales and Victoria Lucero, his wife; Petra Archiveque, Benigna Gonzales de Lucero, and Andreita Gonzales Lucero; No. 16, by Jose Pacifico Baca and Maria Sencion Crespin, his wife; No. 17, by Maria Gertrudes L. de Baca; No. 18, by Ignacio, Paula, and Manuela Romero; No. 19, by Refugio Sandoval;

387 No. 20, by Cipriano Atencio and Candida Blea y Montoya, his wife; Veliz Espinosa and Tomasita Blea y Montoya, his wife; No. 21, by Benigno Lopez and Josefita Lucero, his wife; Benito Lucero and Lorenza Aragon, his wife; Manuel de la O and Lenora Lucero, his wife; No. 22, by Bicente Salas, M. Juana M. Gonzales, Seferino Salas, Paula Salas, Maria Dolores Salas, Francisca Salas, and Maria Clara Salas; No. 23, by Maria Paula Montano, J. Guadalupe Jiron, Manuel Gonzales, and Maria Camila Gonzales; No. 24, by Lucretio Jiron and Maria Filomena Lopez, his wife; No. 26, by Juan Simon Moriaga and Leonarda Lucero, his wife; No. 27, by Juan Teodoro Lucero and Maria Jacinto Tafoya, his wife; No. 28, by Ana Maria Hurtado and Jose Pablo Gallegos; No. 29, by Martin Lucero and Maria Estefana Montano, his wife, and Jose Jnez Lucero; No. 30, by Benjamin M. Read and Magdalena S. de Read, his wife; No. 31, by Jose B. Ortiz and Cesaria Romero, his wife; No. 32, by Jose Antonio Lucero, Fernando Aragon, Rufina Sanchez, Manuel Gonzales, Jose Juan Gonzales and Maria Antonia Ortiz; No. 33, by Patricio Montoya, Juan Luis Montoya and Rosaria Ortiz, his wife; Faustin Montoya and Guadalupe Lucero, his wife; No. 34, by Facunda Baca and Petra Vigil, his wife; No. 35, by

Maria Remedios Caca de Silva; No. 62, by Mariano Martinez and Maria Ignacio de las Nieves Lucero, his wife; Antonio Varos and Ramona Lucero, his wife; Espiridon Garuno and Euginia Lucero, his wife; Ignoscencio Lucero and Tomasa Salas, his wife; Patricio Lovato, Ricardo Gallegos and Nestora Lovato, his wife; Domingo Armijo, Nestor Armijo, and Nicanor Armijo; No. 63, by Ramon Salazar and Manuel Garcia, and No. 64, by Manuel Garcia, Gregoria Velarde, his wife.

Those numbered from 36 to 53, inclusive, 53½, and from 54 to 61, inclusive, and 65 are made to Joel P. Whitney, as grantee, by grantors as follows: No. 36, by Juan Montoya, Feliz Montoya,
388 Soledad Lucero, Bartolo Padilla and Altagracia Miera, his wife; No. 37, by Cristoval de los Reyes Lucero; No. 38, by Cristerna Montoya y Bernal, Manuel Sanchez, Tomas Tafoya and Teodora Morales, his wife; No. 39, by Maria Inez Lucero, Gregorio Aragon and Maria Simona Sandoval, his wife; No. 40, by Lauriano Lucero; No. 41, by Juan N. Salas and Ruperta Lucero, his wife; No. 42, by Martin Lucero and Maria Estefana Montano, his wife; Jose Antonio Sandoval y Baca and Maria Colunia Lucero, his wife; Jose Telesforo Lucero and Maria Pablo Salas, his wife; No. 43, by Maria Tomasa Borrego, Victor Aragon, Francisco Aragon, Lorenza Aragon, 2nd; No. 44, by Zenon Sandoval and Guadalupe Mares, his wife; Marcelino Baca and Preciliana, his wife; No. 45, by Agapito Tafoya and Martina Aragon, his wife; No. 46, by Teresita Salas; No. 47, by Manuel C. de Baca, Juan Madrid and Juana Maria Garcia, his wife; Antonio Garcia and Luz Aragon, his wife; Francisco Garcia, Tomas Salas and Ignes Garcia, his wife; Josefa C. de Baca; No. 48, by Roman Baca and Maria Gilia Lucero, his wife; Marcelino Baca and Presciliana, his wife; Jose Bernardo Aragon and Cecilia Baca, his wife; Esquipulo Baca and Micaela Lucero, his wife; No. 49, by Maria Luisa Aragon; No. 50, by Maria Isidora de Jesus Aragon; No. 51, by Juan Jose Montoya; No. 52, by Santiago Lucero; No. 53, by Eusebio Aragon and Encarnacion Gonzales, his wife; No. 53, by Maria Polonia Lucero and Estefana Lucero; No. 54, by Juan Francisco Tafoya and Maria de la Luz Espinosa, his wife; No. 55, by Maria Luz Chavez de Tafoya and Maria Meregilda Tafoya; No. 56, by Felipe Sandoval and Martina Lucero, his wife; No. 57, by Anastacio Lucero and Anastacia Armijo, his wife; No. 58, by Jose Juan Lucero and Pablo Ruperto Lucero; No. 59, by Jose de Jesus Lucero and Maria Martina Roival, his wife, and Quirino Lucero; No. 60, by Cesaria Gonzales, Jose Francisco
389 Aragon and Perfilia Lucero, his wife; Jose Lucero, Guillermo Lucero, Solertino Lucero, and Margarita Lucero; No. 61, by Maria Guadalupe Martinez de Lucero, Juan Teodoro Lucero and Maria Jacinta Tafoya, his wife; Maria Quirina Lucero, Jose Fernando Marcelino Lucero and Maria Benigna Sanchez, his wife; Rufina Lucero, Jose Julian Lucero and Maria Benigna Leyva, his wife, and Antonio Hilario Lucero and Maria Rosaria Leyva, his wife, and No. 65, by James G. Whitney and Octavia S., his wife.

This last conveyance (No. 65) embraces also other property. The consideration expressed therein is $17,000, and the aggregate of the

considerations expressed in the others of the said deeds, wherein Joel P. Whitney is named as grantee, is $30,570.

And be it further remembered that thereafter the said plaintiffs, Joel Parker Whitney and others, in their said consolidated case No. 205, presented to the chief justice of this court their petition, dated March 8th, 1895, praying a new appeal to the Supreme Court of the United States in the said consolidated case, and also presented to the said chief justice for his approval a cost bond on the said new appeal, and thereafter the said chief justice, by order dated March 11th, 1895, duly allowed the said new appeal as so prayed for and approved the said cost bond and signed a citation directed to all the defendants in the said consolidated case; which petition, order, cost bond, approval, and citation were all duly filed in the said consolidated case in the office of the said clerk on the 15th day of March, 1895, and are in the words and figures next following—that is to say:

390 In the Court of Private Land Claims of the United States, Santa Fé District, New Mexico.

JOEL PARKER WHITNEY, JOSE JUAN LUCERO, Lauriano Lucero, Juan Cristobal Lucero, Jose de Jesus Lucero, Juan Teodoro Lucero, Jose Telesforo Lucero, Bernard S. Rodey, and Hannah Harris (Original Petitioners in Case No. 205), and Manuel Hurtado and Jose Antonio Gallego (Original Petitioners in Case No. 240), Petitioners,

vs.

THE UNITED STATES OF AMERICA, GEORGE N. Fletcher, Jose Albino Baca, Robert H. Longwill, Tomas C. de Baca, Antonio Mares, Nicolas de la O, Emilio de la O, David de la O, Amado C. de Baca, Andres C. de Baca, Marcos C. de Baca, Trinidad Delgado, Robert B. Willison, Juan Maria Armijo, Simona Armijo, and Anselmo Armijo, Respondents.

(Consolidated Case No. 205.)

Petition for allowance of a new appeal in the above-entitled cause, being a consolidation, under order of the court, of cases Nos. 205 and 240.

The above-named Joel Parker Whitney, Jose Juan Lucero, Lauriano Lucero, Juan Cristobal Lucero, Jose de Jesus Lucero, Juan Teodoro Lucero, Jose Telesforo Lucero, Bernard S. Rodey, Hannah Harris, Manuel Hurtado, and Jose Antonio Gallego, being all the plaintiffs in the above-entitled consolidated case, wherein the final decision and decree of the court of private land claims of the United States were made and entered, at Santa Fé, in the Territory of New Mexico, on the twenty-ninth day of September, in the year

eighteen hundred and ninety-four, conceiving themselves aggrieved by the said decision and decree, in that thereby the north boundary of the Canada de Cochiti grant is decreed to be the old pueblo on the mesa of Cochiti, instead of the old pueblo on the Potrero de las Vacas, as claimed by the plaintiffs, and in that thereby also the west boundary of the said grant is decreed to be the same old pueblo on the mesa of Cochiti, instead of the Sierra de Jemez, as claimed by the plaintiffs, and in that thereby also the south boundary of the said grant is decreed to be the north line of the present Pueblo de Cochiti, as surveyed and patented by the United States, instead of the north line of the lands owned by the Indians of Cochiti at the date of the said grant, as claimed by the plaintiffs, do hereby appeal from the said decision and decree to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which the said decision and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

And the said plaintiffs and appellants hereby declare and suggest that the appeal hereby taken and allowance of which is
391 hereby prayed is a second and new appeal from the said decision and decree, and the same is prayed out of abundant caution, because the appeal heretofore taken in open court from the said decision and decree did not show on its face or otherwise the names of all the defendants in the said consolidated case, and the transcript in the said case was not completed and transmitted within the time prescribed by the rules of the Supreme Court, and consequently the said first appeal has been dismissed.

And the said plaintiffs and appellants further pray that due citation upon this appeal may be issued and may be directed to and served upon all and singular the defendants in the said consolidated case—that is to say, The United States of America, George N. Fletcher, Jose Albino Baca, Robert H. Longwill, Tomas C. de Baca, Antonio Mares, Nicolas de la O, Emilio de la O, David de la O, Amado C. de Baca, Andres C. de Baca, Marcos C. de Baca, Trinidad Delgado, Robert B. Willison, Juan Maria Armijo, Simona Armijo, and Anselmo Armijo, all of whom except the United States of America were brought into the said consolidated case by order of the court and consent of parties upon the trial thereof, and without other formality of procedure.

Dated Santa Fé, New Mexico, March 8, 1895.

JNO. H. KNAEBEL,
Attorney for All the said Plaintiffs and Appellants.

Upon the proceedings heretofore had and now of record in the above-entitled consolidated case (No. 205, &c.) in the court of private land claims of the United States, and upon reading the foregoing petition of the plaintiffs and appellants therein, and on motion of John H. Knaebel, Esq., attorney and of counsel for the said plaintiffs and appellants, it is ordered that the new appeal prayed by the said plaintiffs and appellants in and by their said petition be, and the same is hereby, allowed, and the same is hereby made return-

able in the Supreme Court of the United States on the ninth day of May, A. D. 1895.

And whereas it appears from an inspection of the records of this court that the defendants named in the said petition (except The United States of America) are the plaintiffs in cases Nos. 41, 95, 161, and 195 on the New Mexico docket of this court who were brought into the said consolidated case upon the trial thereof as parties defendant thereto, let due citation to them issue accordingly.

Witness Hon. Joseph R. Reed, chief justice of the court of private land claims of the United States, on this eleventh day of March, A. D. 1895.

(S'd) JOSEPH R. REED,
Chief Justice.

392 Know all men by these presents:

That the undersigned, Joel Parker Whitney, as principal, and Ernest Knaebel and John H. Knaebel, as sureties, are held and firmly bound unto the United States of America, George N. Fletcher, Jose Albino Baca, Robert H. Longwill, Tomas C. de Baca, Antonio Mares, Nicolas de la O, Emelio de la O, David de la O, Amado C. de Baca, Andres C. de Baca, Marcos C. de Baca, Trinidad Delgado, Robert B. Willison, Juan Maria Armijo, Simona Armijo, and Anselmo Armijo in the penal sum of five hundred dollars; for the payment of which, well and truly to be made, we bind ourselves and our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated this eleventh day of March, A. D. 1895.

Conditioned that whereas the said Joel Parker Whitney, with others, has taken an appeal from the decision of the court of private land claims of the United States in the case of Joel Parker Whitney and others against The United States of America and others, the said obligees (being consolidated case number 205 on the docket of the said court of private land claims), which appeal is returnable on the ninth day of May, A. D. 1895:

Now, if the said appellants shall prosecute the said appeal without delay and with effect and pay all costs that may be adjudged against them or any of them upon the said appeal, then this obligation shall be void; otherwise the same shall remain in full force.

JOEL PARKER WHITNEY, [SEAL.]
By JNO. H. KNAEBEL, *His Attorney.*
ERNEST KNAEBEL. [SEAL.]
JNO. H. KNAEBEL. [SEAL.]

Approved March 11, 1895.

(S'd) JOSEPH R. REED,
Chief Justice Court of Private Land Claims.

393 *Citation.*

The United States of America to the United States of America and Matt. G. Reynolds, Esquire, its attorney; George N. Fletcher, Jose Albino Baca, Robert H. Longwill, Tomas C. de Baca, Antonio Mares, Nicolas de la O, Emelio de la O, David de la O, Amado C. de Baca, Andres C. de Baca, Marcos C. de Baca, Trinidad Delgado, Robert B. Willison, Juan Maria Armijo, Simona Armijo, and Anselmo Armijo:

You and each of you are hereby cited to appear at and before the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the ninth day of May, in the year eighteen hundred and ninety-five, pursuant to an appeal allowed by the court of private land claims of the United States in the cause wherein Joel Parker Whitney, Jose Juan Lucero, Lauriano Lucero, Juan Cristobal Lucero, Jose de Jesus Lucero, Juan Teodoro Lucero, Jose Telesforo Lucero, Bernard S. Rodey, Hannah Harris, Manuel Hurtado, and Jose Antonio Gallego are plaintiffs and The United States of America, George N. Fletcher, Jose Albino Baca, Robert H. Longwill, Tomas C. de Baca, Antonio Mares, Nicolas de la O, Emelio de la O, David de la O, Amado C. de Baca, Andres C. de Baca, Marcos C. de Baca, Trinidad Delgado, Robert B. Willison, Juan Maria Armijo, Simona Armijo, and Anselmo Armijo are defendants (being consolidated case number 205 in the said court of private land claims), to show cause, if any there be, why the decision and decree in the said appeal mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, on this eleventh day of March, A. D. 1895.

JOSEPH R. REED,
Chief Justice of the Court of Private Land Claims of the United States.

394 UNITED STATES OF AMERICA, }
Territory of New Mexico. }

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing 393 pages contain a true, full, and complete transcript of the records and files of my office in the case filed herein, in which Joel Parker Whitney *et al.* are plaintiffs and The United States of America *et al.* are defendants, for the confirmation of a certain claim commonly known and designated as the Cañada de Cochiti grant.

Witness my hand and the seal of said court this 15th day of March, A. D. 1895.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES, *Deputy.*

395 *Citation.*

The United States of America to the United States of America and Matt. G. Reynolds, Esquire, its attorney; George N. Fletcher, Jose Albino Baca, Robert H. Longwill, Tomas C. de Baca, Antonio Mares, Nicolas de la O., Emelio de la O., David de la O., Amado C. de Baca, Andres C. de Baca, Marcos C. de Baca, Trinidad Delgado, Robert B. Willison, Juan Maria Armijo, Simona Armijo, and Anselmo Armijo:

You and each of you are hereby cited to appear at and before the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the ninth day of May, in the year eighteen hundred and ninety-five, pursuant to an appeal allowed by the court of private land claims of the United States, in the cause wherein Joel Parker Whitney, Jose Juan Lucero, Lauriano Lucero, Juan Cristobal Lucero, Jose de Jesus Lucero, Juan Teodoro Lucero, Jose Telesforo Lucero, Bernard S. Rodey, Hannah Harris, Manuel Hurtado, and Jose Antonio Gallego are plaintiffs and The United States of America, George N. Fletcher, Jose Albino Baca, Robert H. Longwill, Tomas C. de Baca, Antonio Mares, Nicolas de la O., Emelio de la O., David de la O., Amado C. de Baca, Andres C. de Baca, Marcos C. de Baca, Trinidad Delgado, Robert B. Willison, Juan Maria Armijo, Simona Armijo, and Anselmo Armijo are defendants (being consolidated case number 205 in the said court of private land claims), to show cause, if any there be, why the decision and decree in the said appeal mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, on this eleventh day of March, A. D. 1895.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

(S'd) JOSEPH R. REED,
Chief Justice of the Court of Private Land Claims of the United States.

A true copy.

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES, *Deputy*.

396 I hereby acknowledge service of the within citation on behalf of the United States this 10th April, 1895.

MATT. G. REYNOLDS,
U. S. Attorney.

397 [Endorsed:] U. S. S. C., Oct. term, 1894. Joel Parker Whitney *et al.*, appellant-, *vs.* The United States *et als.*, appellees. Citation & adm'n of U. S. att'y.

398 *Citation.*

United States of America to the United States of America and Matt. G. Reynolds, Esquire, its attorney; George N. Fletcher, Jose Albino Baca, Robert H. Longwill, Tomas C. de Baca, Antonio Mares, Nicolas de la O., Emelio de la O., David de la O., Amado C. de Baca, Andres C. de Baca, Marcos C. de Baca, Trinidad Delgado, Robert B. Willison, Juan Maria Armijo, Simona Armijo, and Anselmo Armijo:

You and each of you are hereby cited to appear at and before the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the ninth day of May, in the year eighteen hundred and ninety-five, pursuant to an appeal allowed by the court of private land claims of the United States in the cause wherein Joel Parker Whitney, Jose Juan Lucero, Lauriano Lucero, Juan Cristobal Lucero, Jose de Jesus Lucero, Juan Teodoro Lucero, Jose Telesforo Lucero, Bernard S. Rodey, Hannah Harris, Manuel Hurtado, and Jose Antonio Gallego are plaintiffs and The United States of America, George N. Fletcher, Jose Albino Baca, Robert H. Longwill, Tomas C. de Baca, Antonio Mares, Nicolas de la O., Emelio de la O., David de la O., Amado C. de Baca, Andres C. de Baca, Marcos C. de Baca, Trinidad Delgado, Robert B. Willison, Juan Maria Armijo, Simona Armijo, and Anselmo Armijo are defendants (being consolidated case number 205 in the said court of private land claims), to show cause, if any there be, why the decision and decree in the said appeal mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, on this eleventh day of March, A. D. 1895.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

(S'd) JOSEPH R. REED,
Chief Justice of the Court of Private Land Claims of the United States.

A true copy.

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES, *Deputy*.

399 In the Court of Private Land Claims of the United States, Santa Fé, New Mexico.

JOEL PARKER WHITNEY *et al.*, Plaintiffs and Appellants,
vs.
THE UNITED STATES OF AMERICA *et als.*, Defendants and Appellants.

As the attorney of record of Juan Maria Armijo, Simona Armijo, and Anselmo Armijo, three of the defendants in the above-entitled

cause (they being also all the plaintiffs in case No. 161, lately on the docket of the said court of private land claims), I hereby admit due, timely, and sufficient service on the said defendants and each of them of the citation on the pending appeal in the said cause to the Supreme Court of the United States, of which citation a certified copy is hereto annexed, and, hereby appearing in the Supreme Court of the United States as attorney on the said appeal for the said Juan Maria Armijo, Simona Armijo, and Anselmo Armijo, as appellees, I hereby request the clerk of the Supreme Court to cause my said appearance to be duly entered in my behalf upon the docketing of the said appeal.

Dated Santa Fé, March 16, 1895.

GEO. HILL HOWARD,
JEFFRIES & EARLE,
Attorney for Defendants and Appellees Juan Maria Armijo, Simona Armijo, and Anselmo Armijo, Santa Fé, New Mexico.

As the attorney of record of George N. Fletcher, one of the defendants in the above-entitled cause (he being also the sole
400 plaintiff in case No. 41 on the docket of the said court of private land claims), and also of Amado C. de Baca, Andres C. de Baca, Marcos C. de Baca, Trinidad Delgado, Antonio Mares, and Robert B. Willison, six of the defendants in the above-entitled cause (they being also all the plaintiffs in case No. 195 on the docket of the said court of private land claims), I hereby admit due, timely, and sufficient service on the said defendants and each of them of the citation on the pending appeal in the said cause to the Supreme Court of the United States, of which citation a certified copy is hereto annexed.

Dated Santa Fé, March 16, 1895.

JAMES H. PURDY,
Attorney for Defendants and Appellees George N. Fletcher, Amado C. de Baca, Andres C. de Baca, Marcos C. de Baca, Trinidad Delgado, Antonio Mares, and Robert B. Willison, Santa Fé, New Mexico.

As the attorney of record of Jose Albino Baca, Tomas C. de Baca, Antonio Mares, Nicolas de la O, Emelio de la O, and David de la O, six of the defendants in the above-entitled cause (they being also all the plaintiffs except Robert H. Longwill, who is now dead, in case No. 95 on the docket of the said court of private land claims), I hereby admit due, timely, and sufficient service on the said defendants and each of them of the citation on the pending appeal in the said cause to the Supreme Court of the United States, of which citation a certified copy is hereto annexed.

Dated Santa Fé, March 16, 1895.

N. B. LAUGHLIN,
Attorney for Defendants and Appellees Jose Albino Baca, Tomas C. de Baca, Antonio Mares, Nicolas de la O, Emelio de la O, and David de la O, Santa Fé, New Mexico.

401 [Endorsed:] No. —. In the Supreme Court of the United States. On appeal from the court of private land claims, New Mexico. Joel Parker Whitney *et al.*, plaintiffs and appellants, *vs.* The United States of America *et als.*, defendants and appellees. Citation and admissions of service; also appearance of Geo. Hill Howard for appellee Armijo. Jno. H. Knaebel, attorney for plaintiffs and appellants, Santa Fé, New Mexico.

402 [Endorsed:] Case No. 15,897. Supreme Court U. S., October term, 1894. Term No., 1013. Joel Parker Whitney *et al.*, appellants, *vs.* The United States *et al.* Citation and admission of service. Office Supreme Court U. S. Filed Jun- 1, 1895. James H. McKenney, clerk.

Endorsed on cover: Case No. 15,897. Court of private land claims. Term No., 271. Joel Parker Whitney *et al.*, appellants, *vs.* The United States *et al.* Filed May 9, 1895.

MAR 31 1897
JAMES H. MCKENNEY,

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1896.

No. 271.

JOEL PARKER WHITNEY, ET AL.,
Appellants,

vs.

THE UNITED STATES, ET AL.,
Appellees.

Appeal from the Court of Private Land Claims.

STATEMENT AND ARGUMENT OF APPELLANTS.

JNO. H. KNAEBEL,
Counsel for Appellants.

Donnan, McConnell & Hughes, Printers, 1311 Curtis St.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1896.

No. 271.

JOEL PARKER WHITNEY, ET AL.,
Appellants,
vs.
THE UNITED STATES, ET AL.,
Appellees.

Appeal from the Court of Private Land Claims.

ARGUMENT OF JOHN H. KNAEBEL.
Counsel for the Appellants.

Statement and Analysis.

The United States Court of Private Land Claims, sitting at Santa Fé, New Mexico, having, on the twenty-ninth of September, 1894, confirmed the Spanish land grant known as the Cañada de Cochiti Grant, affecting a tract of land in the county of

Bernalillo in that territory (*Transcript*, fol. 377), the claimants, Joel Parker Whitney, of Boston, Mass., and others, feeling aggrieved by the error of the Land Court in the location of the grant, now seek by the present appeal (*Ib.*, fols. 390, 391, etc.) to have the decree of confirmation so modified that it shall properly fix the boundaries of the tract in accordance with the granting papers and the evidence, as has been done by this court in several cases (*e. g.*, *Fossat vs. United States*, 2 Wall. 649; *Vide* also, *Alviso vs. United States*, 8 Wall. 337). Here, as in the court below, the important question "is as to the true location of the north and west boundaries of the land claimed." (Opinion, *Transcript*, fol. 370.)

No question is raised as to the eastern boundary (which is admitted to be the Rio Grande), nor as to the southern boundary (which is admitted to be the northern boundary of the present patented pueblo of Cochiti with the protraction of that boundary due west), but we contend that the court erred because it fixed the northern boundary by the comparatively recent ruins on the mesa of Cochiti, instead of by the old pueblo ("Pueblo Viejo") east of Cuesta Colorada, on the Potrero de las Vacas. (Map, Exhibit 7, *Transcript*, between pages 164 and 165.)

And we further contend that the court also erred because it adopted as the western boundary an arbitrary imaginary line drawn due south from the ruins on the mesa of Cochiti, instead of the sierra (or mountain range) of Jemez, which we admit to be the mountain range through which the western boundary line is drawn according to the Harris survey. (*Ib.*; also *Transcript*, fols. 50, 51, 66.)

[The United States provisional survey of the grant, as indicated on the published government map of New Mexico, shows the western line of the

grant as the line of the most westerly chain of the Jemez mountains, but since another chain of those mountains is found more easterly, with the "Rio Vallecito" (laid down on the Harris map) running in the valley between the two ranges, we concede that the sierra which forms our western boundary is the one immediately east of the Rio Vallecito.]

We claim the grant as indicated on the Harris map *(supra)*, with the Rio Grande as the eastern boundary and the sierra as the western boundary, and bounded on the other sides by parallel lines, the northern being drawn east and west through the prehistoric ruin known as the "Pueblo Viejo" on the Potrero de las Vacas, and the southern being a line common with the northern boundary of the Pueblo de Cochiti. The Land Court vouchsafed to us a small area of agricultural land, scantily watered by the meager brook called the "Rio de Cochiti," and five thousand acres of land, more or less, about as valuable as an equal area of the Desert of Sahara, without water, pasture, or any other thing of value —the arid *débouchement* of several arroyos—worse than Arabia Petræa, without manna or the wand of Moses. Its decree denies us the pastures of the Cañada de en Medio (Harris map, *supra;* Opinion, *Transcript*, fols. 375, 376), as well as those on the top of the high "potreros," but with stint hand concedes to us the butt ends of those precipitous cliffs, with no right of way to the abundant pasturage which we expressly sought of the Spanish king by our petition, and which he graciously conceded by his grant, and fifty-seven years afterwards (in 1785) expressly adjudicated and confirmed to our exclusive use. (*Transcript*, fols. 171 to 176.)

About sixteen years ago the appellant, Mr. Whitney, acquired from the heirs and legal representatives of the grantee, many of whom were then

living on the grant, nearly all the title, by the payment of large sums of purchase money (*Transcript*, fols. 386 to 389), and the other appellants are, for the most part, Mexicans whom he has allowed to retain small parcels of agricultural land. (*Ib.*, fol. 7.)

The petition for confirmation was filed on the second of March, 1893 (*Ib.*, fol. 1), but the trial was not reached until the twenty-first of September, 1894 (*Ib.*, fols. 34½, 40). In the meantime, but long after the cause had come under the jurisdiction of the Land Court, divers covetous intruders found, or pretended to find, low grade ores on the property, and, in open defiance of law (*Newhall vs. Sanger*, 92 U. S. 761; *Tremouth vs. San Francisco*, 100 U. S. 251; *Cameron vs. United States*, 148 U. S., 301), assumed to appropriate as mineral locations parcels of the estate (*Transcript*, fols. 152, 155). Hence, we find on the sketch map of the grant put in evidence by the claimants that, on the suggestion of the government (*Ib.*, fol. 154), there were added, on the trial, certain marks to indicate "Gold Hill" and "Mineral Monument," etc. (*Ib.*, fol. 260); but, of course, these facts have no relevancy, except so far as they aid the mind to form a correct idea of the topography.

The alleged townsite, "Allerton," has, to a certain extent, the sanction of the grant title.

In the petition to the Land Court (*Ib.*, fol. 1, etc.) are set forth, among others, these facts, viz:

1. Grant on the second of August, 1728, by the king of Spain, by Juan Domingo de Bustamente, his governor and captain-general of the royal province of New Mexico, to Antonio Lucero, formerly in the Spanish military service, of a certain tract of land bounded on the north by the Old Pueblo of Cochiti, on the east by the Rio del Norte (otherwise

called the Rio Grande), on the south by the lands of the Cochiti Indians, and on the west by the Jemez mountains—Sierra de Jemez—with its entrances and exits, watering places, uses and customs (easements —"*servidumbres*").

2. Signature of the granting decree by the governor, and its counter-signature by Antonio de Gruciaga, his secretary of state and war.

3. Direction in the decree that the grantee should be placed in royal and personal possession under the boundaries described in his petition, being those hereinbefore specified.

4. Command in the decree that, having acquired the said granted land quietly and peaceably, the said grantee should not be dispossessed, and that he and his heirs might enjoy the same, subject to the condition subsequent that the said grantee should settle the same within the time prescribed by the royal ordinances in that behalf [*i. e.*, four years].

5. Command in the decree for a return of the original papers, after the delivery of juridical possession of the said lands, in order that a duplicate *(testimonio)* might be given to the grantee. [It is not quite clear from the original Spanish whether the return of the original was to be made by the grantee or the alcalde. *Vide Transcript*, fol. 159: "y dada dha posesion devolvera el original para que se le dé testimonio."]

6. Delivery of juridical possession to the grantee by the designated official, Captain Andres Montoya, chief alcalde *(alcalde mayor)* of the pueblos of Cochiti, Santo Domingo and San Felipe, on the sixth of August, 1728, etc.

7. Return of the granting decree and act of juridical possession to the governor and their deposit in the archives at Santa Fé.

8. Delivery to the grantee of a *testimonio* or duplicate of the said title papers by direction of the governor.

9. Survey of the said tract by the United States, showing 104,554 24-100 acres. [As above noted, this survey extends to the most westerly range or fork of the Jemez mountains, but, on the trial, we limited our contention to the range or fork (west line on the Harris map, *Transcript*, fol. 260) immediately east of the Rio de Vallecito.]

10. "The said grantee, Antonio Lucero, entered upon, settled, occupied, resided upon, improved, enjoyed and claimed, all and singular, the said tract of land, holding and claiming the same in fee simple absolute, peaceably, openly, continuously, uninterruptedly and exclusively, under and by virtue of the said grant, from the date of the said act of juridical possession, to-wit, the sixth day of August, A. D. 1728, for a period much longer than four years [prescribed by the royal ordinances] and up to the time of his death. He died seized and possessed of all and singular the said tract of land; whereupon the same descended to his descendants, his heirs-at-law, who, with their legal representatives, thenceforward continued under the same claim of title the peaceable, open, continuous, uninterrupted and exclusive possession and occupation of all and singular the said tract of land up to and after the cession of New Mexico to the United States, save only that in the year seventeen hundred and eighty-five, one Antonio Gallego, a lieutenant in the Spanish military service, intruded into the Cañada del Medio [Cañada de en Medio], a portion of the said tract, upon the pretense that he had been authorized by Governor Don Juan Bautista de Anza to occupy and use the said cañada for the pasturage of the royal cavalry; whereupon, in the month of November,

A. D. 1785, Antonio Lucero de Godoi and numerous others, descendants and heirs-at-law of the said deceased grantee, Antonio Lucero, presented their petition to Antonio de Armenta, chief alcalde *(alcalde mayor)* and war captain, having judicial and administrative jurisdiction in the premises, and thereby they complained of the said intrusion of the said Antonio Gallego, and expressed their dissent to his said adverse proceedings, and declared that their fathers and grandfathers had left the said granted tract of land to all of them equally, and they prayed that the said judicial and administrative officer should secure them relief in the premises. In view of the said petition, the said Antonio de Armenta, chief alcalde and war captain, reported the said petition and the subject matter thereof to the governor and captain-general of New Mexico, then and there representing the royal person, and the said governor and captain-general, upon due consideration of the said petition, found and determined, and so declared in substance to the said alcalde and war captain, that, inasmuch as the said petitioners were in all respects the legal heirs of the said granted tract of land, they were entitled to enjoy it as their own in preference to any other individual, and the said intrusion and pretense of the said Antonio Gallego were unjust and unfounded and a grievous harm to the said heirs. Thereupon the said chief alcalde and war captain, under full authority in that behalf conferred upon him by the said governor and captain-general, and in discharge of his lawful jurisdiction as chief alcalde aforesaid, duly made his order and judgment, reciting the said petition, the said report to the governor and captain-general, and the said determination by the said superior authority thereupon, and adjudging and declaring that the said order and judgment, being an instrument in

writing signed by the said chief alcalde and his attendant witnesses, and bearing date on the second day of November, A. D. 1785, should remain as conclusive evidence of the rightful title of the said heirs to the said land grant and of its rightful acquisition by them and their descendants from the king of Spain; and, by the said instrument, the said chief alcalde, in the exercise of the jurisdiction legally vested in him, declared that the same should remain before any tribunal or judge as evidence for all time of the title of the said granted tract of land."

11. The originals of the said petition and adjudicatory instrument are in the possession of the United States, kept in the archives at Santa Fé.

[NOTE.—This definitive and conclusive adjudication appears in the Transcript, at folios 171 to 177, and it was fully proved on the trial by the uncontradicted testimony of the government's expert, Will M. Tipton, *Ib.*, fols. 41, 42; nor is any doubt suggested as to its authenticity.]

It is a sovereign recognition and confirmation of our grant (since the recital—*one hundred and ten years ago*—of the governor's determination is proof of that fact); and, since it declares and adjudicates the Cañada de en Medio (Harris Map, *Transcript*, fol. 260) to be a part of the granted tract, it expressly contradicts the improvident ruling of the Land Court that our northern line runs south of that cañada. That court said (*Ib.*, fol. 375): "It is claimed for this proceeding that it shows that the Luceros were the owners of the Cañada de en Medio under the grant, which, being north of the line of the pueblo on the Mesa Cochiti, justifies the conclusion that that pueblo was not the one intended as the north boundary."

The allegations of the petition were controverted by the answer of the government (*Ib.*, fol. 27, etc.), as well as by operation of law (26 Stat., page 856, § 6.)

On the trial, certain claimants of alleged conflicting grants intervened, and, without objection, were made defendants (*Ib.*, fols. 34, 39). The respective claims to these intrusions were tried before our case was brought to a hearing, and they were, so far as they conflicted with our claim, defeated by the government with the aid of the counsel of the present appellants. Although they were proceeded against as appellees on this appeal, they have no interest therein, having acquiesced in the decisions of the Land Court on their respective claims. By these decisions the Rito de los Frijoles claim (Fletcher case, No. 41, *Ib.*, fol. 39) was rejected entirely, the Peralta claim (Armijo case, No. 161, *Ib.*) was dismissed and abandoned on the trial, and the Ojo de Borrego claim (Baca cases, Nos. 95 and 195, *Ib.*) was confirmed for a tract wholly outside of our survey.

The trial of our case in the Land Court began on the twenty-first of September, 1894 (*Transcript*, fol. 40), and ended on the twenty-fifth of September, 1894, on which day it was taken under advisement. (*Ib.*, fol. 38.) Four days afterwards (the twenty-ninth of September, 1894), and before the stenographer's notes of the trial had been fully extended, the court passed its decree of confirmation (*Ib.*, fol. 377), by which it found:

1. Sufficient interest in the claimants to maintain the suit.

2. "That on the second day of August, in the year, 1728, the king of Spain, by Don Juan Domingo de Bustamente, his governor and captain-general of the royal province of New Mexico, upon the petition

of Antonio Lucero, made to him a grant of a certain tract of land situate in said province, the same now lying and being in the county of Bernalillo, in the territory of New Mexico."

3. "That, pursuant to the terms of said grant, the said Antonio Lucero received possession thereof, holding and claiming the same under and by virtue of said grant, and that he died seized and possessed of the same, and that it descended to his heirs-at-law, who, with their assigns and legal representatives, thenceforth continued, under the same claim of title, the said possession and occupation, up to and after the cession of New Mexico to the United States of America."

4. "The court, therefore, settles and determines that the said grant be, and the same is hereby, confirmed, and decrees the location, boundaries and area of the same as follows, to-wit: Said grant of land is bounded on the north by the old pueblo of Cochiti, which is situate on the mesa of Cochiti, on the south side of the Cañada of Cochiti, which point is about eight thousand one hundred and ninety feet in a northerly direction from the northwest corner of the lands of the Indians of the Pueblo of Cochiti, as the same has been fixed and determined by the survey and patent of the same by the United States of America; on the east by the Rio del Norte (otherwise called the Rio Grande), on the south by the land of the Cochiti Indians, as the same has been fixed and located by the survey and patent thereof to the Indians of the Pueblo of Cochiti by and under the authority of the United States of America, and on the west by the same old pueblo first above referred to as the northern boundary of the grant hereby confirmed; which said grant of lands contains in area about five thousand acres of land."

5. "That the said private land claim is entitled to confirmation in the name of the original grantee, Antonio Lucero, for the use and benefit of all parties in interest claiming by, through, or under him under the same title."

6. No prior adjudication under our government.

7. "That the title and claim of the said grant of land within the boundaries herein set forth, founded on the said grant, is a good and valid claim to the said land under the treaty between the United States of America and the Republic of Mexico, known as the treaty of Guadalupe Hidalgo, and under the laws and ordinances of the governments of Spain and Mexico, and the title thereto is hereby established and confirmed to the said Antonio Lucero, the original grantee, and his heirs, assigns and legal representatives," etc.

From this decree the present appeal is taken (*Ib.*, fol. 390), because "thereby the north boundary of the Cañada de Cochiti grant is decreed to be the old pueblo on the mesa of Cochiti, instead of the old pueblo on the Potrero de las Vacas," and because "thereby also the west boundary of the said grant is decreed to be the same old pueblo on the mesa of Cochiti, instead of the Sierra de Jemez."

We concede, by the Harris map (*Ib.*, fol. 260), that the southern boundary is a common line with the northern boundary of the present patented Pueblo de Cochiti, and the protraction due west of that line.

In support of our claim, we adduced evidence on the trial as follows, viz:

1. A fragment of our *testimonio*, or duplicate, of the original petition of Antonio Lucero to the governor and of the governor's grant, both of which ancient documents (they being upwards of *one hun-*

dred and sixty-six years old) are on the same sheet of paper, the grant being immediately at the foot of the petition, on the second page. (*Transcript*, fols. 156, 157, pages 107, 108; *Ib.*, fols. 165, 166, pages 111, 112.)

We proved the authenticity of this fragment of the grant by the government's expert and trusted special agent, Will M. Tipton, who stands pre-eminent for his learning, ability and integrity. He testified (*Ib.*, fol. 41) that, during the tenure of office by Bustamente as governor and captain-general, Antonio de Gruciaga was at one time his secretary of state and war; that he (the witness) was acquainted with the handwriting of that secretary, and that, in his opinion, the fragmentary granting decree on the second page and the "note" or "endorsement" on the first page "is the handwriting of Antonio de Gruciaga."

This "note" or "endorsement" is in the following words: "Villa de Santa Feé, Agosto 2 de 1728, ante el señor governador y capn general deste reino de la Nueva Mexico se presentó por el contenido." (*Ib.*, fols. 157, 159, 166, 168.) It refers, of course, to the petition on the same page.

On reading the original fragment of the grant in Spanish (*Transcript*, fol. 157, page 108), together with the translation thereof, which is substantially correct, although one or two trifling and immaterial errors may therein be found (*Ib.*, fol. 166, page 112), it plainly appears that the governor, on examination of the said petition of Antonio Lucero, thereupon ordered the chief alcalde (*alcalde mayor*) of San Felipe, Santo Domingo and Cochiti to examine certain land sought by the petitioner under the same petition, with the view of ascertaining whether or not any adverse rights existed inconsistent with the petitioner's request; and it further plainly appears,

that no such adverse rights being found, "se le ase [for *hace*] mersed [for *merced*] en nombre de su mgd" (*Ib.*, fol. 157), or (translated), "grant is made to him in name of his majesty"; and it further plainly appears that these words of grant are immediately followed by the clause, "i [for *y*] le metera e [*n* evidently lost] posesion Rl. y personal debajo de los li [*nde* evidently lost] ros que sita [for *cita*] de la cual abiendola," or (translated), "and [the alcalde] shall put him i [n] royal and personal possession under the boundaries [*linderos*] which he mentions [or *cites*] of the which having it * * * " ["having" being here an auxiliary participle].

Thus, even without resort to the official copy, or *testimonio por concuerda*, made of the entire granting decree by the alcalde mayor, Juan Antonio Cabeza de Baca, in the year 1817 (*Transcript*, fols. 159, 168, 169), we have original convincing proof that the petitioner asked for a grant of land under specific boundaries mentioned in his petition, and all the land so applied for was so granted, and juridical possession commanded, should no adverse rights be first made to appear.

By the very terms of this decree the petition became a part thereof; for it was therein recited as descriptive of the land and boundaries affected. Hence, the necessity of consulting the petition thus accredited by the granting decree itself.

2. The petition of Antonio Lucero, which, as we have seen, is a part of the fragment of the *testimonio* and on the same sheet with the fragment of the grant. (*Transcript*, fol. 156, page 107; fol. 165, page 111.)

Read in connection with what remains of the granting decree which immediately follows it, this petition informs the governor that the petitioner has selected a tract of land embracing a parcel adapted

to husbandry and also an extent of land adapted to pasturage. In those days land in New Mexico had no commercial value except town lots and irrigable parcels, and, when a citizen sought a grant, it was usual for him, as a reason for asking it, to point out that it contained an inviting piece of cultivable land and, referring to that as the more essential part of the solicited estate, afterwards, with regard to his need of pasturage, to indicate the external boundaries of the whole tract solicited.

In 1728, a Spaniard, proposing to establish his family in an unsettled district of country, naturally asked for a large extent of pasture land, although the agricultural land available to him might be very limited—such limitation being caused by the scantiness of the uncertain brooks, hyperbolically called "rios." Even a hundred years afterwards, the humblest citizen of Mexico might ask, as of course, for a donation of eleven square leagues of public land (nearly 50,000 acres), with as much confidence as an American citizen applies for a homestead of one hundred and sixty acres; and it is safe to say that the early homesteader of Illinois and Iowa received far more of value in his farm of one hundred and sixty acres than the Mexican of the same period received in his poverty-stricken leagues. *A fortiori*, the Spaniard of 1728, was not much enriched by the possession of his royal grant. (*United States vs. Sutherland*, 19 How. 363.)

Accordingly, Antonio Lucero first specified in his petition the piece of agricultural land, at or adjacent to ("en") the "Mesa de Cochiti," as being sufficient for sowing ten "fanegas" of wheat and planting two of Indian corn, and then stated his further object, namely, the pasturage of his small stock and his horse herd. In Spanish, "*ganada menor*" refers to such stock as sheep and goats.

A flock of ten thousand sheep would still be "*ganada menor.*" After stating these motives, which actuated him to apply to the governor, the petitioner proceeded to state the specific boundaries of the said solicited land ("*dicha tierra*"). There is not the slightest difficulty about ascertaining these specified boundaries from the time worn petition, save a trifling embarrassment relative to the western boundary. The "Mesa de Cochiti," which serves as the *point de vue* or *point d'appui* of the tract intended by the petition and grant, is described as "la Mesa de Cochiti donde estubieron retirados los indios que se sublebaron" (the Mesa de Cochiti, whither the Indians who rebelled retreated). All the old chronicles show that this "mesa," sometimes called "el Potrero Viejo," is the self-same spot which the Land Court erroneously assumed to be the "old Pueblo de Cochiti" ("Pueblo Viejo de Cochiti"). In none of these chronicles is this "mesa," or table-land, mentioned as the "old pueblo," although Bandelier sometimes styles it the "Potrero Viejo," but they repeatedly mention it as the "*mesa* to which the rebellious Indians retreated."

Indeed, when the Cochiti Indians and their allies (of the common Queres stock), after being worsted in battle by the Spaniards, retreated to this historical "mesa" or "potrero," in the latter part of the seventeenth century, they there built the pueblo whose ruins, now become venerable after the lapse of upwards of *two centuries*, are frequently called today "the old Pueblo of Cochiti;" but Bandelier clearly points out this error in common modern speech.

When the Spaniards, by strategy (*Transcript*, fol. 116) captured this new pueblo on the "Mesa de Cochiti" in or about the year 1692, and made prisoners of the Indian women and children, and had

removed such a quantity of the garnered corn as might be needed in Santa Fé, they burned the pueblo, so that even to-day the charred remains of the corn may be there seen. (*Transcript*, fol. 52.)

In 1728, when the Spanish soldier Antonio Lucero, with the events of the Indian insurrection as fresh in his mind, by actual experience (*Ib.*, fol. 128) or by common report, as those of our civil war are now in the minds of our veterans, selected his ranch "en la mesa de Cochiti donde estubieron retirados los indios que se sublebaron," he saw no halo of antiquity about the burned pueblo, and had no idea of referring to that recent ruin as a venerable thing or a conspicuous land mark, but, like the captain-general, the war secretary and all the soldiers of New Mexico, he knew the spot only as the "mesa" to which the insurgent Indians had retreated. The antiquity of the "mesa" as the asylum of the fleeing Indians antedated the erection of the pueblo which, after their retreat, they erected to shelter them while they lived there. It seems almost ridiculous to suggest that the simple-minded Spanish soldier, Antonio Lucero, who, in the first part of his petition, had referred to the "Mesa de Cochiti" by its familiar name, should immediately proceed to suggest as his *north* boundary a recent ruin lying immediately *west* of his coveted agricultural land, and refer to that ruin as "el Pueblo Viejo de Cochiti."

Indeed, the present pueblo or village of the Cochiti Indians is far older than the recent ruins on the mesa de Cochiti, and it would be as reasonable to call that our north boundary as so to denominate the mesa de Cochiti, or any object there situate.

With reference to the attractive parcel of agricultural land lying adjacent to the mesa de Cochiti and in an *easterly* (that is, easterly, northeasterly and southeasterly) direction therefrom (Harris map,

Exhibit 7; *Transcript*, fol. 260), he stated his purpose to be to plant it ("para en el sembrar"), and estimated its modest quantity at ten fanegas of wheat and two of corn (about thirty-three acres; *Transcript*, fol. 145). Evidently, this small parcel was agricultural land in the immediate vicinity of the mesa—not southerly, because that land is high and not irrigable (*Ib.*, fol. 59)—but easterly, where it appears on the map (*Ib.*, fol. 260).

Next in the statement of his wants he adds, "and in order to pasture my small stock *(ganado menor)* and horse herd" ("y para apastar mi ganado menor y cavallada").

Then follows a description of the solicited tract by boundaries: "And the said land is bounded on the north part by the old Pueblo de Cochiti, and on the east by the Rio del Norte, and on the south by lands of the natives of said pueblo, * * * the west by * * * of Xemes" [same as Jemez], etc.

This reference to the western boundary ("the west by * * * of Xemes"—"el poniente con * * * de Xemes") must be read with the context, the topography of the country, the customary adoption in royal grants of prominent natural objects or conspicuous artificial objects as landmarks, the significance of names used as descriptive of well known places, and relevant facts of history.

In our SECOND POINT, *infra*, we show that, by internal evidence and probable reasoning, the mention of "Xemes" [Jemez], in this boundary, suggests irresistibly a natural object pertaining to the Jemez country in the west, and appropriately "la Sierra de Jemez," as an autithetical boundary to the "Rio del Norte" on the east.

3. The *testimonio por concuerda* of the original *testimonio* of the grant papers, that is, a compared

and authenticated copy of *(a)* the petition of Antonio Lucero for the grant, *(b)* the *granting decree*, and *(c)* the act of juridical possession. (*Transcript*, fols. 158, 159, 160, pages 108, 109; also translation, *Ib.*, fols. 167, 168, 169, 170, pages 112, 113; Exhibit No. 2.) This *testimonio*, or official copy, was made by Don Juan Antonio Cabeza de Baca, alcalde mayor of Cochiti and its jurisdiction, on the thirtieth of December, 1817.

The authenticity of this important document is, we understand, admitted by the government, and it is clearly shown by the uncontradicted testimony of its own expert, Mr. Tipton. (*Transcript*, fols. 41, 42, pages 20, 21, and by the depositions in Exhibit No. 5 *b*, *Ib.*, fol. 212.)

From this *testimonio por concuerda*, or official copy, we can read every word of the petition, the granting decree, and the act of juridical possession. Although our fragmentary original *testimonio (supra)* shows to-day, after the lapse of nearly *one hundred and seventy years*, only the petition, partly mutilated, and a fragment of the granting decree, yet, in 1817, when the original *testimonio* was only *eighty-nine years old*, it must have been in a much better state of preservation than it is now, eighty years later. When produced before the alcalde mayor, Juan Antonio Cabeza de Baca, the original documents were, he certifies, "*troncos y muy mal tratados*," that is, torn, or in pieces, and very badly kept, but there is no intimation or reason to believe that any part of the original *testimonio* was then missing. The contrary appears from the perfect nature of the copy thus officially made. (*Ib.*, fol. 160.)

Resorting to this *testimonio por concuerda* (*Vide* FIRST POINT, *infra*), we read clearly that our western boundary is "la Sierra de Jemez," or the mountain range of Jemez. [In Spanish, the letters "X"

and "J" are often used indifferently. Thus "México" is frequently written "Méjico."]

With this aid, we also learn that the latter part of the granting decree is as follows (*Ib.*, fols. 159, 168, 169): "the grant is made to him in the name of his majesty, and he will be placed in royal and personal possession under the boundaries he refers to, and of which, having acquired the same quietly and peaceably, he shall not be dispossessed, and he and his heirs may enjoy the same, with the charge that he shall settle the same within the time the royal ordinances prescribe. And he thus provided, commanded and signed before me, the present secretary of state and war, to which I certify; and said possession being given, he will return the original, so as to furnish him a duplicate.

"BUSTAMENTE.

"By command of his excellency, the governor and captain-general.

"ANTONIO DE GRUCIAGA,
"*Secretary of State and War.*"

In the act of juridical possession, appearing as part of this *testimonio por concuerda* (*Ib.*, fol. 169), and which was subscribed by Captain Andres Montoya, the alcalde mayor of the pueblos of Cochiti, Santo Domingo and San Felipe, with his attendant witnesses, it is certified that on the sixth day of August, 1728, that alcalde delivered to the grantee, in the name of the king, possession of the lands expressed and mentioned in this grant ("de las tierras que en esta merced se dicen y mencionan") "there being no person whatever who, under a better right, might claim the same."

We discuss this *testimonio por concuerda* in our FIRST POINT, *infra*.

4. The original *expediente* or *testimonio* of a litigated cause, tried before the alcalde mayor of the proper jurisdiction, upon the complaint of the heirs and legal representatives of the grantee, Antonio Lucero (*Transcript*, fols. 41, 42; also Exhibit No. 3, *Ib.*, page 110, etc., fols, 162, 163, 164, and translation, page 114, etc., fols. 171 to 175), alleging that a certain Spanish lieutenant of cavalry, Antonio Gallego by name, had trespassed on the "Cañada de en Medio," part of the said granted tract, by pasturing thereon horses belonging to the Spanish cavalry (*Ib.*, fols. 163, 171). From this exhibit it further appears that the said alcalde (Antonio de Armenta) referred the complaint to his "superior chief" (*i. e.*, "his excellency," the governor), and thereupon, with the approval of that authority found and adjudicated on the second of November, 1785, that the intrusion was an unlawful trespass on the grant; "that the said heirs should enjoy what is so lawfully their own, for they should be preferred to every individual; and furthermore, when they are in all respects the legal heirs to said tract, it was doing them a harm very grievous," etc., and concluding (*Ib.*, fol. 174): "Wherefore and *under the authority which is on me conferred*, I give them the present instrument, so that *before any tribunal or judge* it may be presented they may be *heard in justice* with the *right which since their grandfathers and fathers they acquired by royal grant*, which his majesty (God preserve him) made to the aforesaid their grandfathers," etc.

The authenticity of this instrument of adjudication is, we understand, admitted by the government, and it is clearly proved by the uncontradicted testimony of Mr. Tipton (*Ib.*, fols. 41, 42).

The importance of this adjudication is apparent, because the pastures of the Cañada de en Medio, the

subject matter thereby affected, are all situate to the north of the arbitrary northern boundary, fixed by the decree of confirmation (Harris map, *Transcript*, fol. 260; Opinion, *Ib.*, fols. 375, 376, page 247).

5. In addition to the *testimonio por concuerda*, or compared and certified copy of the original grant *testimonio* (Exhibit No. 2, *supra; Transcript*, fol. 167, etc.), by which we showed that our true western boundary is the mountain range of Jemez, and the adjudication of the alcalde mayor, Antonio de Armenta, on the second of November, 1785, by which we showed that our true northern boundary lies north of the pastures of the Cañada de en Medio, we also introduced in evidence numerous ancient instruments of conveyance, under our grant title, purporting to convey in severalty divers parcels of the granted estate, nearly all of which recite the grant and indicate by their northern boundary calls that the grant extends to some limit far to the northeast of the mesa de Cochiti, and from some of which it will be clearly seen that the descendants and legal representatives of the grantee, in the actual beneficial occupation of the granted premises, claimed and exercised the right of conveying, under the grant title, lands lying far north of the "Mesa de Cochiti," assumed erroneously by the Land Court to be the site of the "old Pueblo de Cochiti" named in the grant muniments.

For instance, our Exhibit No. 18 (*Transcript*, fols. 299, 301), which is a conveyance made by Juan Ygnacio Atencio to Antonio Lucero, on the twenty-third of December, 1823, purports to convey "a parcel of land * * * in the said Cañada de Cochiti, which is composed of three hundred and thirty-two Castilian varas, and that its boundaries are on the north and south as far as the *royal grant* extends,

and on the east the *Arroyo de las Piedras*, and on the west lands of the Maeses."

Now, it appears by the uncontradicted testimony of the witness Pablo Lucero (*Transcript*, fol. 129) that the *Arroyo de las Piedras* is situate about a half a mile north of the narrow gorge or cañoncito, which is at the north part of the cañada proper. It will be seen from the Harris map (*Ib.*, fol. 260) that, just where the mesa de Cochiti begins on its northerly line, the cañada contracts into a "cañoncito," or little cañon, where there is a little fall, "Salto de Cañon" (*Ib.*, fol. 129), and farther up a cañada, or wide cañon or vale, again appears. The parcel described in this instrument (Ex. No. 18) must have been in the vicinity of this upper cañada.

The general settlement in those parts had become known as the "Cañada de Cochiti." In describing parcels of land, it was a common practice (apparent from our exhibited conveyances) to consider the little stream as a northerly or southerly boundary, rather than an easterly or westerly one. The Land Court did the same in its opinion (*Ib.*, fol. 373) and its decree (*Ib.*, fol. 378, page 249).

Our Exhibit No. 6a (*Ib.*, fol. 258), dated in 1799, describes certain varas bounded east and west by lands of other owners, "on the north as far as the grant of this place reaches and on the south the river;" No. 9 (*Ib.*, fol. 258), dated in 1793, describes land running north "as far as the river;" No. 10 (*Ib.*, fol. 276), dated in 1797, describes land extended north and south "as far as extends the instrument of the tract;" No. 11 (*Ib.*, fol. 279), dated in 1820, describes land bounded on the south by the river and "on the north as far as the royal grant of said cañada;" No. 12 (*Ib.*, fol. 282), dated in 1790, describes land bounded "on the north" by "the river of the cañada proper;" No. 13 (*Ib.*, fol.

284), dated in 1816, describes land "from north to south as far as the royal grant of that district" (lo que resa la merced real de dicho partido); No. 13a (*Ib.*, fol. 286), dated in 1816, describes land bounded "on the north as far as the grant, on the south the river of said cañada;" No. 14 (*Ib.*, fol. 290), dated in 1816, was executed before the alcalde mayor, Juan Antonio Cabeza de Baca, the same who in 1817 issued the *testimonio por concuerda (supra)*, and describes "a piece of agricultural land in said cañada which is composed of forty varas wide from east to west, and as long (*largo*, *Ib.*, fol. 289) as the cañada affords (*tiene de caya)*," with boundaries "on the north and south as far as the royal grant of said cañada extends;" No. 15 (*Ib.*, fol. 292), dated in 1802, describes land bounded "on the north the river" and "on the south as far as the tract extends ("*alcanse el sitio*," *Ib.*, fol. 291, page 188), with entrances and outlets free;" No. 16 (*Ib.*, fol. 295), dated in 1816, describes land "whose boundaries are on the north as far as the grant, on the south the old river;" No. 17 (*Ib.*, folio 298), dated in 1820 and executed before the alcalde mayor, Juan Antonio Cabeza de Baca, describes land extending "on the south as far as the river and on the north as far as the royal grant of said cañada;" No. 18 (*Ib.*, fol. 301), dated in 1823, describes land whose boundaries are "on the north and south as far as the royal grant extends" [this land lying, as we have above shown, far north of the mesa de Cochiti]; No. 19 (*Ib.*, fol. 304), dated in 1829, describes land extending "long from north to south as far as the royal grant of said cañada;" No. 20 (*Ib.*, fol. 307), dated in 1829, describes land with boundaries "on the north as far as the royal grant, on the south as far as the river;" No. 21 (*Ib.*, fol. 309), dated in 1829, describes land bounded "on the south with the

river, and on the north as far as the grant;" No. 22 (*Ib.*, fol. 312), dated in 1831 and executed before the same alcalde mayor, Baca, describes "a piece of agricultural land in the pass of Our Lady of Guadalupe of Cochiti," and (on the north side) "in length as far as the grant of said place"—"on the south as far as the grant of said place;" No. 23 (*Ib.*, fol. 316), dated in 1833, describes land extending "on the north as far as the grant, on the south as far as the Rio Bajo of said cañada;" No. 26 (*Ib.*, fol. 321), dated in 1760, describes land bounded "on the south with the river" and "on the north with the barren slope;" No. 27 (*Ib.*, fol. 324), dated in 1765, describes land bounded "on the south with the river;" No. 28 (*Ib.*, fol. 326), dated in 1768, describes a piece of land with entrances and outlets free, extending on the north as far as the tract extends ("'asta donde resa el sitio," *Ib.*, fol. 325), and No. 30 (*Ib.*, fol. 330), dated in 1832; No. 31 (*Ib.*, fol. 332), dated in 1834; No. 32 (*Ib.*, fol. 334), dated in 1846; No. 34 (*Ib.*, fol. 340), dated in 1802; No. 35 (*Ib.*, fol. 342), No. 36 (*Ib.*, fol. 346), dated in 1817; No. 37 (*Ib.*, fol. 350), dated in 1817; No. 39 (*Ib.*, fol. 355), dated in 1829; No. 40 (*Ib.*, fol. 357), dated in 1768; No. 41 (*Ib.*, fol. 359), dated in 1770; No. 42 (*Ib.*, fol. 361), dated in 1837, are all equally suggestive of a familiar grant widely extending far away to the north of the boundary line assumed by the Land Court, and equally suggestive of the local usage of regarding the "Mesa de Cochiti" as being in a westerly rather than a northerly direction from the parcel of agricultural land in its vicinity—all "north" calls calling attention to the direction of the true old pueblo on the Potrero de las Vacas.

[NOTE.—It is an immemorial custom of New Mexicans, still continued, to convey lands by "vara"

(Mexican yard) frontage on a natural or artificial water course and leave the corresponding boundary indefinite, as "to the hills" or "to the limits of the grant," etc. The legal effect of these conveyances seems to be to vest titles to the agricultural parcels in severalty, but leave the outlying lands both practically and legally in common for pasturage, etc.]

Exhibit No. 45 (*Transcript*, fol. 365), dated in 1783, describes a piece of agricultural land in said cañada "on both sides of the river of said cañada, with on the north entrances and outlets free, on the south the same entrances and outlets free, as far as the royal grant;" No. 46 (*Ib.*, fol. 369), dated in 1780, describes land "on the side of the river"—"on the south with the river of the said cañada," and "on the north free entrances and outlets."

It is worthy of observation that many of these ancient instruments were judicially "solemnized" before Antonio de Armenta, the same alcalde mayor who adjudicated respecting the right of the grant owners to the Cañada de en Medio in 1785 *(supra)*, and before Juan Antonio Cabeza de Baca, the same alcalde mayor who issued the *testimonio por concuerda* in 1817 *(supra)*.

6. We also introduced the last will and testament of Francisca Jaramillo [de Lucero], widow of the grantee, Antonio Lucero (*Transcript*, fol. 181), who seems to have acquired some part of her husband's lands—perhaps under the law of the marriage community, although it is doubtful whether a royal grant is a part of the bienes gananciales (*Vide*, citation on top of page 515, *Panaud vs. Jones*, 1 Cal. 488). She appears to have died before the twenty-fourth of January, 1755 (*Ib.*, fol. 184). She recites the fact of the grant in her will (*Ib.*, fol. 182), and refers to it for its boundaries. On her death, the agricultural lands left by her, described as 5,222

varas, were partitioned in severalty among her children (*Ib.* fols. 184, 185). The alcalde mayor declares that "the partition of the movable property having been made," he "proceeded to the farming lands" and divided them. In such partitions, it was not usual to divide the pastures and waste lands, but they remained in common *(supra)*.

7. Divers other instruments of conveyance, ancient and modern, made under the grant title, including many deeds to James G. Whitney and Joel Parker Whitney. (*Transcript*, pages 162 to 243.)

8. The counsel for the government having discovered in the archives the *expediente* of a proceeding in nullification of a fraudulent title to a grant somewhat conflicting with ours on the north, and having courteously shown it to us, we put the same in evidence (*Transcript*, fols. 45 (foot of page 23), 87, 88 (page 56); Exhibit No. 5, fols. 195 to 212). From this it will be seen that Governor Mendoza, in 1739, upon the petition of one Andres Montoya (*Ib.*, fols. 199, 200), asking for a tract on the west side of the Rio del Norte, extending west to "the mountain of Cochiti" and being "more than a league" north of the orchards of Cochiti and "more than a league" south of those of San Ildefonso, made him a conditional grant (*Ib.*, fol. 200) in terms so guarded and suspicious as to prevent even a suggestion of any intent to permit prejudice or transgression of any outstanding private title, "it being understood that it must be *without prejudice to any third person*, for, on the contrary, *it is not valid*." It further appears that the reguar alcalde of the proper jurisdiction did not officiate, but named a "delegate" of the same family as the petitioner, who apparently permitted the petitioner to act as an "attendant witness," and who failed to inquire whether or not adverse claims existed. For this

reason, the act of possession was suspicious and fraudulent on its face and so adjudicated (*Ib.*, fols. 207, 211). Besides, the grantee had never "settled" on the tract (*Ib.*, fols. 207, 211), but had evidently abandoned the pretension of title, and, *thirty-four years afterwards*, two collateral heirs named Romero made a ranch on the property at a place (*Ib.*, fol. 210) "more than three leagues and a half" northerly from the pueblo of Cochiti, when they were complained of for interfering with the pasturing stock of Indians, the Spanish cavalry and others (*Ib.*, fol. 168). The cavalry officers showed that the alleged settlement did not interfere with the government pastures (*Ib.*, fol. 199, page 134), and it appeared that it was on crown land on which the Indians and others were accustomed to pasture (*Ib.*, fol. 211). Manifestly, this disputed territory, "El Capulin," must have been the pasture ground called "Potrero de las Vacas," mentioned by the witness Manuel Hurtado (*Ib.*, fols. 87, 89, 90) as being "northeast of the Pueblo Viejo, between the Alamo and Capulin cañons," where people "were accustomed to round up their cows," etc., and where, the witness had been informed, "two persons by name of Romero had ranches."

But, even if the proceedings evidenced by this *expediente* purported to cover any part of our grant, they could not bind the grant claimants of the time, because they were not parties (*Sabariego vs. Maverick*, 124 U. S. 261).

They contain evidence, however, that at that time (1767), the settlement under our grant was already quite extensive; Miguel Romero saying in his petition (*Ib.*, fol. 210) "and midway there is a settlement of Spaniards in which there are some forty odd families."

This *expediente* is only important as showing (1) that the isolated mountains (Testimony of Harris, *Ib.*, fol. 62) found to the north of the mesa de Cochiti were called "*Cochiti* mountains" (not "*Jemez* mountains"), and (2) the solicitude of the Spanish king, by his governors, when grants were made, to save prior private titles.

Thus, in the Antonio Baca grant claim (Land Court docket No. 90), it appeared that Baca had been dispossessed under a junior grant and that a later governor, on due hearing, had restored him to his original holding. In truth, a prior grantee could question a junior grant just as freely as with us the holder of a known mineral lode could protect himself against a "placer" patent.

The Ojo de Borrego claim was confirmed by the Land Court as a grant limited to a specific parcel, including the "Ojo de Borrego" (Borrego's spring), situate between the west line of the Santo Domingo patented lands and the east line of the Jemez patented lands. By referring to the map of New Mexico published by the government, the court will see that the spring "Ojo de Borrego" is there laid down just west of the Santo Domingo survey. Now, it appears from the archives that the petitioner for that grant (A. D. 1768), referring to that spring, said: "Knowing from the said spring I can support what God has been pleased to give me, and that it will not injure any person, it being *between the Cochiti mountain and the Jemez mountain*, quite distant from the said pueblos."

This conforms to the topography as shown by the Harris map (*Transcript*, fol. 260) and the government's photograph (*Ib.*, fol. 256).

9. Our oral testimony confirmed the written evidence as to the existence of the grant and as to the location of its boundary calls, etc., and also

made it clear that the grant, with its attendant claim and possession, continued for generations, embraces all the tract delineated on the Harris map (*Transcript*, fol. 260), viz:

(1) **Will M. Tipton** (*Ib.*, fol. 41) proved the handwriting of the alcaldes mayores, Juan Antonio Cabeza de Baca and Antonio de Armenta, as well as of Governor Bustamente's secretary of state and war, Antonio de Gruciaga, thus authenticating our Exhibits Nos. 1, 2 and 3 (*Ib.*, fols. 41 to 45), and also proved that Gruciaga was such secretary, and Armenta such alcalde mayor.

(2) **Felipe Sandoval** (*Ib.*, fol. 46) proved the death of Mariano Salas, Jesus Maria Cabeza de Baca and Juan Lopez, who had been examined as witnesses before the surveyor-general, in the matter of our land claim, in the year 1882; whereupon, pursuant to the statute (26 Stat., § 5, page 856), the depositions of the said deceased witnesses so taken (Exhibit No. 5b, *Transcript*, fol. 212, page 141) were read in evidence. Thereby we proved the existence, handwriting and official character of Juan Antonio Cabeza de Baca.

(3) **William Harris** (*Ib.*, fol. 47, page 25) proved the accuracy of the photograph (Exhibit No. 6, *Ib.*, fol. 256) and the Harris map (Exhibit No. 7, *Ib.*, fol. 260), and further testified that he was a mining engineer and land surveyor; that he was acquainted with the district of country in controversy; that the "Sierra or mountain range which appears in the background of this photograph shown on the sky line" is "apparently the high portion of the mountain between the Peralta cañon and the sierra that runs by the Jemez river;" that that range or sierra runs "generally north and south;" that "the character of the country, topographically speaking, from that sierra, as shown on the photo-

graph, easterly to the Rio Grande," "is principally a mesa—a mesa split by cañons, with an occasional peak;" that he had been over the land "with a view of indicating by survey and map the location of the Pueblo Viejo de Cochiti and other points," and had made the map (Exhibit No. 7, *supra*) as the result of his work; that on that map the red line to the left hand [marked "Divide" on map] "indicates the general trend of the divide between the mountains and the Peralta cañon;" that "east of this divide the waters flow into the Rio Grande—south and east," and the waters from the other side "flow into the Jemez—the Jemez valley;" that the point (on the map) marked "Pueblo Viejo," near the point of the Cuesta Colorada, "is the location of an old ruin built of stone," called by the Mexicans on the survey (José Antonio Sandoval, Francisco Sandoval and Miguel Lucero) "Pueblo Viejo;" that the double line on the east of the map represents the Rio Grande; that "Cochiti," at the right lower corner of the map represents the present Indian village of the Cochiti; that the marks near the "cañada" [of Cochiti] represent the present Mexican pueblo [village] on the Cañada de Cochiti; that the mark or diagram and words "Ruined Pueblo," in a northwesterly direction from the Mexican pueblo represent a ruined village; and further (*Ib.*, page 27), that he had been up the Cañon de Cochiti and seen evidences of cultivation and habitation; that up to the northwest, beyond the forks of the Cañon Medio Dia, there are evidences of a small ruin—on the east fork of the main Cochiti; that the present acequia is taken out a little below the boxes of the cañon, and taken on the north side of the river; that he saw in the upper part of the Cañon de Cochiti a sort of foundation of square blocks of stone, the foundation apparently very old; that "there is one enclosure there that

has one pine tree growing in it, * * * perhaps eighteen to twenty inches in diameter;" that the Cañon el Medio [evidently, Cañon, or Cañada, de en Medio] "takes its source near the group of mountains at a place called Picacho;" that "it is rather of an open cañon, some very good grazing there;" that the grazing of that cañada "disappears gradually as we go near the river—it does not seem to be such good grazing below;" that (*Ib.*, page 28) "as you proceed westerly from the Cañada de Cochiti to the sierra upon which this divide is made in red ink," the country is "very rough—divided with mountains and covered with timber, and on the flat of the mesa, wherever there is any soil, it is very good grazing country;" that (*Ib.*, fol. 51) the Mexican pueblo is "on a low mesa between the Cañon de las Casas and the Cochiti cañon, and it is a continuation of the mesa that lies between the Pino cañon and Cochiti cañon, only very much lower;" that "as you travel westward and northwest from the Mexican pueblo, you come upon a very steep bluff there, * * * and there is a mesa there that is considerably higher than the one upon which the Mexican village is now;" that in these precipitous bluffs are excavations reputed to have been dwellings of the cliff dwellers; that the "ruined pueblo" on this mesa "is composed of space in a rectangular form of about two hundred feet long, and I should judge from fifty to one hundred feet wide, surrounded by double rows of rooms; these rooms are generally several feet high, some of them four, and divided thus rectangular in form;" that "in the center there is another row of buildings, and this central divided row is in the best state of preservation;" that "one of the rooms shows the old logs five or six feet long;" that "there are a few of these old wooden logs remaining in the adobe and stone walls, plas-

tered with adobe;" that "there are burnt cobs there and burnt corn in profusion;" that (*Ib.*, fol. 53, page 29) the "Pueblo Cuesta Blanca," at the junction of the San Miguel cañon and the Cañada el Medio [Cañada de en Medio] "is very similar in appearance to the others; * * * on the western side it had every appearance of a tumble-down village—Indian village;" that (*Ib.*, fol. 53) Pueblo Viejo, situated to the southeast of the Cuesta Colorada, as laid down on the map, is thus described: "It comprises a space very nearly in the form of a square; it has no division through the center at all, and it is formed of stone, probably two feet high from the ground; there are a great many scattered stones over the trail to it from Cañon Capulin, up by that bluff marked Cuesta Colorada, and from there to the eastward over the pueblo, and there is another trail coming up from Cañon Capulin further to the southeast" * * * (*Ib.*, page 30); "There are very few traces of old plaster left there; the walls are very nearly all gone; the walls are not over two feet, possibly three feet, high in any place, and the stones that composed the walls are worn round wherever they show to the weather; the trails leading to it over the different directions are worn smooth in the solid rock from the footsteps evidently, and a large tank at one corner outside of the enclosure, but for what purpose I cannot say, but there is a large juniper tree growing out of the center of it" * * * "probably two feet or two feet and a half" in diameter. This witness also showed the existence of fossil footprints in the solid rock in the vicinity of the Pueblo Viejo (*Ib.*, fol. 54), which we suggest, on the authority of a geological friend, were formed in a prehistoric time, when the present rocks there were "volcanic mud," since metamorphosed.

On cross-examination, this witness (Harris) was asked whether the land on which the "Cañada Pueblo," or present Mexican village is situate, is agricultural land (*Ib.*,fol. 59), and he answered "No, sir; that is not agricultural land; *the agricultural land is north;* that is arid land and sand hills down in here; that is formed, I should think, by the generation of the water; it is a low mesa." He added that the ruin on the mesa whereon "Ruined Pueblo" is indicated on the map is "one complete ruin."

On re-direct examination (*Ib.*, fol. 65, page 39) the same witness shows that from the Mesa de Cochiti up to the "divide" as marked on the map, the country may be regarded as a tableland (mesa) cut up by deep cañons.

(4) **John Dixon** (*Ib.*, fol. 67), a young Cochiti Indian, educated at Carlisle, Penn., testified that he could speak the Indian language, Spanish and English, that the Queres nation was composed of the Pueblos of Cochiti, San Domingo, San Felipe, Santa Ana, Zia, Laguna, and Acoma; that they all speak the same language, that that language is different from that spoken by the Jemez Indians, that (*Ib.*, page 41) when he was a boy his father spoke to him of the old pueblo of his nation and told him where it was. Then followed these questions and answers (*Ib.*, page 41): "Q. Look at this map [Exhibit 7] and state whether or not you can show the location of the Pueblo Viejo de Cochiti; can you? A. Yes, sir. [Points it out.] Q. Describe the country about it? A. This is a small arroyo or cañon, they called it, and all this country is a mesa. Q. Describe the situation of the mesa or mesas on which the Pueblo of Cochiti is situated with reference to adjoining cañons; just what direction in reference to

adjoining cañons or southern points. A. Well, this cañon runs into the Alamo the same way as this one, but, about here, on the northwest, is another step or tableland, two mesas, Potreros de San Isidro. Q. In the course of your life, from childhood up, have you ever heard the Pueblo Viejo referred to or spoken of by the old people? A. Yes, sir. Q. And in the traditions of your nation? A. Yes, sir. Q. What pueblo was referred to? A. The Pueblo Viejo. Q. Is that the one that you have just shown to the court? A. Yes, sir. Q. Was it referred to by them as the Pueblo Viejo de Cochiti? A. Yes, sir; all these Queres Indians. Q. Of the Zia Indians? A. Yes, sir. Q. According to the traditions of your nations, were the Zias once in alliance—union? A. Yes, sir. Q. Can you point out the mesa, the cañon, to which the Indians retreated after the rebellion? A. Yes, sir. Q. Please point it out on the map. A. [Designates is at the "Ruined Pueblo."] Q. Is that so understood by your people? A. Yes, sir. * * * Q. When did you ever hear of a grant of land to the Lucero family? A. When? Q. Yes, sir. A. Well, when I was a boy. Q. Tell us what you heard on that subject from the old men of that tribe when you were a boy—on that subject? A. I heard it was recognized as the Cañada Cochiti grant." He further testified (*Ib.*, 70) as to a dispute with the Luceros as to the division line between them and the Indians on the Rio Grande.

On cross-examination (*Ib.*, fol. 71), this Indian witness testified that the Indians admitted the right of the Luceros to the disputed ground.

Asked, "Do you know where the north boundary is?" he answered, "Well, I have heard by traditions the Pueblo Viejo."

[In the course of his cross-examination and redirect examination, this witness was apparently thrown into some confusion in his understanding of questions, but it is evident that he distinguished between the Pueblo Viejo on the Potrero de las Vacas, as the north boundary of Lucero's grant and the Mesa de Cochiti as the place to which the rebellious Indians retreated, although he says that now-a-days the ruins on that mesa are sometimes called "Pueblo Viejo"—"Well, that is what they say now." Bandelier, in his work, refers to this modern nomenclature.]

It will be noted that the government did not call to the stand any other Indian witness, although all the Pueblo Indians are treated as its wards.

(5) **Manuel Hurtado** (*Ib.*, fol. 74), a witness nearly 68 years old, of some local distinction, testified that he was a greatgrandson of Antonio Lucero, that he (the witness) had lived in the Cañada de Cochiti from the time of his marriage in 1849 until 1876, and that his father always lived there, and his grandfather and greatgrandfather lived and died there; that when he lived there, about fifteen or twenty families, descendants of Antonio Lucero, also lived there; that his father (since dead) would speak about the boundaries of the grant (being present on the property), and "would converse with my uncles, and they would state what the boundaries were. He said that on the north it was the Pueblo Viejo de Cochiti; on the east, Rio del Norte river; on the south, the lands of the Indians of the pueblo of Cochiti; on the west, the point of the Jemez, the top of the mountains." Asked (*Ib.*, fol. 76) whether he had seen the pueblo on the northern boundary, he answered: "I have seen it. * * * When I was a shepherd boy I saw it for the first time. I had my

stock there on that ground." Asked what cañons are in the vicinity of that old pueblo, he answered: "The Capulin is to the south; the Cañon del Alamo is to the north." Asked (*Ib.*, fol. 77) where the Potrero de las Vacas is situated with reference to the old pueblo, he answered: "The Potrero de las Bacas is up here northeast of the Pueblo Viejo, in the branches of the Cañada del Alamo." Then this testimony followed (*Ib.*, page 48): "Q. How long have the claimants of the Cañada de Cochiti grant title occupied and pastured that land under their claim of right? A. Always, since I arrived at the age of reason. Q. How far have they occupied them east and west? A. That is on the north, to the top of the mountain. Q. How long have you known them to occupy and pasture the Cañada el Medio [Cañada de en Medio]? A. Ever since I knew it; always pastured on it; it always has some stock on it. Q. Have the heirs of Antonio Lucero ever established ranches in any of the other cañons of the grant, except the Cañada de Cochiti? A. Yes. Q. In what ones? A. They occupied a ranch at Rancho Viejo, where Don Lucero has his land. Q. What cañon is that? A. In the Cañon de las Casas. Q. In what is called Pino cañon to-day by the Americans? A. Yes; Domingo Lucero, the brother of my grandmother, always had his ranch there. Q. Well, what others —what other cañons—did they occupy with ranches? A. In the Cañon de Capulin; also at a place called Rancho de los Utos, about the peak on the other side, where some of the heirs of Antonio Lucero had ranches, and their names are as follows: Antonio Lucero, Francisco Lucero and José Lujan Lucero. Q. What other brothers of Lucero occupied ranches in the cañons? A. In which cañon? Q. In any of the other cañons outside of the Cañada de Coch-

iti? A. They had them in all of the cañons; they had goat ranches, and they moved them from one place to another. Q. How long have you known the heirs of Antonio Lucero to occupy these lands in these cañons under claim of their grant title? A. Even as late as seventy-one and two they had goat ranches. Q. How far back can you recall they had goat ranches in these cañons under their claim of title? A. All the time they had their own property, and they had their cows. Q. How far to the north did they have those ranches in the cañons—ranches of sheep and cows—under claim of their title? A. From that place that is called Cuesta Colorada, near the old Pueblo Viejo, and over the mountains; sometimes one place, sometimes another." * * * (*Ib.*, fol. 79, page 49) "Q. Now, with reference to the agricultural lands in the Cañada de Cochiti: how far up the cañon have the descendants of Antonio Lucero had habitations and fields? A. About the distance of two miles from that place, above the cañon, is where we planted some beans; at the place where the Cañon el Medio and the Del Norte river come together. [NOTE.—Manifestly, the interpretation should have been "Medio Dia." The north fork of the Cochiti is called "Del Norte." *Ib.*, fols. 109, 114.] Q. Look at this map, at the point indicated at the junction of the Cañon Medio Dia and the Cañada de Cochiti: is that the place? A. At that place is the particular place where they always planted. Q. Did they plant beans there in your childhood, on the claim of their grant title? A. Yes."

On cross-examination (*Ib.*, page 50) this witness (Manuel Hurtado) identified the mesa de Cochiti as the place to which the Indians retreated during the "last conquest" by the Spaniards, and stated that it is called "Potrero Viejo."

[NOTE.—On pages 50, 51 and 52 (*Ib.*) some questions were put to this witness in the effort to show that he had recently made to the government's agents, Will M. Tipton, and Levi A. Hughes, some statements disparaging to the provisional survey made ten years before, but, except some hearsay as to the true Indian line (*Ib.*, fol. 83), it appeared only, from the answers to these questions and to those put on re-direct (*Ib.*, pages 54, 55), that the witness believed that the government's survey, as it had been described to him, was incorrect (as we have already shown, *supra*) in that it goes to the second, or most westerly, range of the Jemez mountains, instead of the easterly "fork" or range marked "Divide" on the Harris map. (*Ib.*, fols. 85, 86, 260.) This appears clearly from the witness' testimony (*Ib.*, fols. 85, 86), read in connection with his deposition, Exhibit No. 7*b* (*not* "a," as stated in the transcript) on page 167. Besides, neither the witness Tipton (*Ib.*, fols. 139 to 147) nor the witness Hughes (*Ib.*, fols. 147 to 150) said a word on this subject.]

Further cross-examined, the witness was asked (*Ib.*, fol. 83, page 52): "Q. Is this pueblo that is marked on this map—the northern pueblo designated on the map the Pueblo Viejo—is that situated on the Potrero el Capulin?" and answered "Yes." He further testified (*Ib.*, page 53) that he knew the location of Cuesta Colorada and the Picacho, that "the people who have been living in the cañons down in that country had goat ranches all over that country," as well as cow ranches, that witness had his ranch in Cañon Capulin, that the Luceros had goat ranches above the Cañon Capulin and at the place called Potrero de Chato, that he had not seen persons living permanently in the Cañon Medio Dia, that the Indians [savages] were always very bad

over that country, that "they killed a little girl in the town," that the Potrero Chato is not called the same as Potrero Capulin, that Potrero Chato is near the Pueblo Viejo. Asked: "Q. Now, this upper pueblo, designated on this map as Pueblo Viejo—is that also known as the old Queres pueblo?" he answered, "Yes; I have been informed that all the Indians who had spoken the same language as those of Cochiti were the Queres, and these were the pueblos of San Domingo, San Felipe, Santa Ana, Alguna and Acoma; these were the Queres."

Then followed: "Q. Now, isn't it the old pueblo, marked on this map Pueblo Viego, known as the Queres pueblo, where all the Indians at one time were concentrated? A. It may be so. Q. You do not know anything about it? A. I do not know. Q. You do not know anything about the tradition of it? A. I do not."

On re-direct examination (*Ib.*, fol. 87), the witness described a "potrero" as a high cliff-bound mesa—and pointed out the Potrero de las Vacas as being "a place northeast of the Pueblo Viejo, between the Alamo and Capulin cañons," and as the place where *two persons named Romero* had had ranches. [NOTE.—*Vide supra*, as to the forfeiture of the pretended Romero or Montoya title.]

The witness identified the Potrero Capulin as formed by the Cañon Alamo, the Cañon Capulin and "an arroyo that comes down from a steep on which the old pueblo is situated," and which enters the Cañon Capulin (*Ib.*, fol. 89). He also showed (*Ib.*, fol. 90) that the Potrero la Cuesta is to the side of the Potrero Capulin. [NOTE.—Evidently "el Capulin" pasture and "Potrero de las Vacas" are the same pasture ground.] Next, the witness describes the "Potrero Largo" as a potrero "at the edge of the end of the Cañada del Alamo," being a potrero

"formed by the Cañons Capulin and Alamo." [NOTE.—This "Potrero Largo" is evidently the large mesa, marked "grazing," on the Harris map (*Ib.*, fol. 260), lying southerly and southeasterly from the Old Pueblo, and bounded by the Rio Grande, the Cañon Alamo and the Cañon Capulin.]

Finally (*Ib.*, fol. 90), the witness showed the persistent and bloody defense of the grant by its owners in conflict with the savages, viz: "Q. How many years were the descendants of Antonio Lucero engaged in defending the grant against the incursions of the Navajoes? A. I cannot state; they were there many years; when I opened my eyes they were already fighting with the people; it was a continuous war. Q. Did any of these people lose their lives in defending their property? A. Yes; that I know there are three; these that I know are three uncles of mine father. [NOTE.—The interpreter was furnished by the government.] Q. Killed? A. They were killed by the Navajoes. Q. Any others? A. Cristoval Lucero, Rafael Lucero, Roman Lucero, Loretta Lucero, José Apodaca and a little girl, the daughter of Manuel Gonzales, was killed right at the house itself."

(5) **Roman A. Baca** (*Ib.*, fol. 91, page 58), 64 years old, testified that he married a greatgranddaughter of the grantee Antonio Lucero, and she was born in the Cañada de Cochiti; that he first saw the Cañada in 1851 or 1852; that he knew something of the common repute at that time as to the boundaries of the Cañada de Cochiti grant "among the old people who are now dead, that what was generally said in that community on that subject was, 'That the boundaries of that grant of Cochiti—of the Cañada de Cochiti—were, to the north, the Pueblo Viejo Cochiti; on the east, the Rio del Norte; on the west, the top of the mountains where the

water-sheds divide the Jemez, and to the south, the lands of the Indians of Cochiti.' ''

Then followed (*Ib.*, fol. 92, page 59, etc.): "Q. Have you ever seen the north boundary call of the grant, the Pueblo Viejo? A. I have. Q. When did you first see it? A. I saw it the first time in '53, when my father-in-law, Domingo Labadie, took me there to show me that place. I was at Cuesta Pintada with some goat herds. * * * Q. State more fully the circumstances under which your father-in-law pointed out to you the Pueblo Viejo, the north call of the grant. A. When he took me to show me the boundary line he took me first to the Rio Grande, where the cuesta [bluff] comes to the Cañada Alamo, and there he showed me a cross that was situated on the slope on the side of the river. It was a cross made of rock, and that was the first boundary line. Q. Did he point that out to you as one of the monuments? A. Yes. Q. One of the monuments established in the old Spanish days? A. So he told me, and then he took me up to the old Pueblo Viejo, to the top of it. We went on the north side, that is traveling towards the south." [Here an objection (of course too late—Phillipp's Ev., *note* 576) as "leading" was sustained.] "Q. Where is that Pueblo Viejo? A. It is on the top of the potrero—Las Vacas it is called. Q. What cañons are near it? A. There are the cañons del Capulin and del Alamo. Q. On that occasion did you and your father-in-law go into that old pueblo or not? A. We did. Q. State what you saw in there on that occasion? A. We only saw the crumbling ruins of the pueblo, and we went around there and we saw a tank. Q. Describe that tank. A. We saw the tank; it is on the side of the pueblo. The pueblo is very large, and in the center of the tank is a large juniper tree. Q. How

large is that juniper tree? A. That juniper tree—at that time it was very large. Q. Was it as much as two or three feet through? A. I do not remember, but it was very large one; it might have been two feet, or more or less. Q. State whether or not you ever heard the Pueblo Viejo referred to as the boundary of that grant by other old people living upon that tract, and, if so, at what time, during what period of time? A. Since I went to that place, I always heard it stated by the old people that that was the boundary line of the north. Q. Did you ever hear in those old days of any other boundary line on the north? A. Yes; my father-in-law himself showed me another boundary line on the west, toward the west, on the same northern side, on the same side of the north. Q. You say the first boundary line he showed you was the cross in the pile of stones? A. It is on the slope of the side of the river; it is a cross made of rocks. Q. How large a cross is it? A. It is a large one; it was very large. Q. How high? A. It was simply rocks embedded into the earth. Q. Was the second monument at the tree and in the tank? A. Yes, sir. Q. Describe that third monument on the north of the grant. A. It was a third monument west, toward the west; it was the trunk of a juniper tree at the foot of a peak cerro" [peaked hill]. "Q. What peak? [A.] Those peaks on the steeps of San Isidro; there are three of them. Q. How near is the third monument to the foot of the mountain known as the Picacho? A. It is very far. Q. To the west? A. It is somewhat to the north."

On cross-examination (*Ib.*, fol. 94, page 61 *et seq.*), the witness stated that the Pueblo Viejo is situated on the Potrero de las Vacas, that the Potrero Capulin lies between the Cañon del

Alamo and the Cañon Capulin, that "the potrero which lies between the Cañon Capulin and the Cuesta Colorada" was not called the Potrero Largo," that he did "not know that they called it the Potrero Largo," that he had been over that country and knew where the Cañon Colorado is, that he knew where the Pueblo Cuesta Colorada is, that the Potrero el Chato is situated north, but is not the Potrero Capulin, that the Potrero Cuesta Blanca is situated between Cañada el Medio [Cañada de en Medio] and the Cañada José Sanchez, that the place to which the Indians retreated the last time is called "Las Casas," that he never knew or heard of any pueblo called Pueblo Viejo except that one "to the north," and that he never heard the pueblo situated on the mesa near the Cañada Cochiti, about where the present Cochiti pueblo [the Mexican village?] is, in the valley, called the Pueblo Viejo, and, asked (*Ib.*, fol. 95): Q. "Now, you never heard the potrero on which the pueblo is situated that lies just south of the Cañada de Cochiti and just west of the Cochiti pueblo, as it now exists, called the Potrero Viejo?" he answered, "No."

On re-direct examination, this witness testified (*Ib.*, fol. 96, page 63) that sometime between the years 1860 and 1870, the old grant papers were delivered "from the hands of the Lucero family" to himself, Felipe Sandoval and Samuel Ellison [NOTE.—Ellison was for many years the territorial librarian], and Manuel Lucero, as a commission, appointed by "the people of La Cañada," to take them to the surveyor-general's office, and that the old papers were accordingly left in that official's custody

(6) **Felipe Sandoval** (*Ib.*, fol. 97) testified, in corroboration of the witness Roman A. Baca, as

to the custody of the old title papers of the grant, and further that he was a son-in-law of Antonio Serafin Lucero, a grandson of the grantee, that he had known the grant since 1849, that the old people of that day talked about the grant and its boundaries, and "that they always said that the boundaries of the grant were on the north the Pueblo Viejo de Cochiti, to the south the lands of the Cochiti Indians, on the east the Rio del Norte, on the west the top of the mountains."

Then follows (*Ib.*, fol. 98 *et seq.*): "Do you know whether or not the descendants of Antonio Lucero and his representatives used the land within the boundaries you have described, and, if so, how did they use them? A. They did. Q. How did they use them—for what purpose? A. Some of them by farming the land, and some of them by pasturing upon it. Q. State where the Pueblo Viejo, on the north boundary, is situated? A. It is to the north, between the Cañon del Alamo, at a place called Potrero de las Vacas. Q. Between the years 1849 and 1890, did you ever hear any question raised as to the location of the north boundary called for in the grant?" [NOTE.—This question was ruled out as *immaterial*.]

This witness further testified (*Ib.*, fol. 99) that the mesa to which the Indians retreated the last time they rebelled is now called "Potrero de las Casas"; also, that the old people "stated that they cultivated a place in the cañon called Frijoles—bean patch;" that Pablo Lucero [a witness, (*Ib.*, fol. 126, page 86] cultivated lands at the cañada itself and had a cow ranch at Rancho de los Utos, near the junction of Cañada el Medio [Cañada de en Medio?] about five or six miles north of the "plaza," and that his (Lucero's) father had had stock there, under claim of the grant title.

On cross-examination (*Ib.*, fol. 102, page 67), this witness testified that he thought that the old house of the grantee was in ruins—"is falling down;" that "there were people living all along that cañada, on both sides of the cañada, and a little below the town is the plaza of La Hurtada," and the town below is all "tumble down"; that he first saw the Cañada de Cochiti in 1849, when he got married, and afterwards he came down there to farm the lands of his father-in-law and to help him. He then explained the word "potrero," etc.; said that he had testified before the surveyor-general on July 21, 1882, that his knowledge of the boundaries of the grant was derived "from those title papers"—adding (*Ib.*, fol. 105) "and I have the knowledge from what was said among the old people. * * * The first statements were made by the old people. I saw the papers afterwards;" that he got his first information as to the boundaries of the grant in 1849, saying (*Ib.*, page 70), "because I would travel with my father-in-law, and he would show me the places and talk to me about it."

[By consent (*Ib.*, fol. 106), the deposition of this witness before the surveyor-general (Exhibit 5b, fol. 212, page 141, *et seq.*) was put in evidence; the same generally corroborating his oral testimony.]

(7) **Jose Sandoval** (*Ib.*, fol. 106, page 70), aged about 62 years, testified that his wife was a granddaughter of the grantee; that he had lived thirty-six years in the Cañada de Cochiti since his marriage; that during the time of such residence he had heard old people, since dead, residents of that community and claiming to occupy lands under the grant, speak of its boundaries and say, "that the boundary line on the east was the Rio del Norte; on the north the Pueblo Viejo of Cochiti, which is on the summit of the Cuesta Colorada" * * * ;

"on the south the high mountain of Zia, where it comes down and abuts against the Jemez mountains, because at that time the old people called the sierra del Zia." * * * "I was not told what the boundary was on the west." [NOTE.—The court will notice that this witness, like many others, and even like counsel and the Land Court itself, sometimes confused west and south.]

Rather obscurely, this witness, as interpreted, testified as to the Pueblo Viejo (*Ib.*, fol. 107): "I know the pueblo well; I know, but I do not know; there are some rocks there, but I do not know where any monuments are;" but he added that he had been "at the place indicated on this map, the Pueblo Viejo, near the Cuesta Colorada," many years ago, after his marriage, when an old man, Manuel Aragon, one of the Lucero family, since dead, showed him that old pueblo as the boundary. Asked (*Ib.*, fol. 108), "What did the old man, Manuel Aragon, tell you about the boundaries?" he answered, "That the boundary line of the grant reached up to the pueblo to the north and at that place." Asked, "Was he there at the Pueblo Viejo when he told you that?" he answered, "Yes."

He further testified (*Ib.*, fols. 108, 109) that before the heirs sold to Mr. Whitney, they used and occupied the grant by farming and pasturing their goats and cows "on the mountains to the Cuesta Colorada, near to the mountains there on these potreros." * * * "They had two ranches in the Cañada de las Casas. One of them was below the place where two cañons come together on the Del Norte" [NOTE.—North fork of the Rio de Cochiti] "and on the Cañon el Medio" [Cañada de en Medio?], "and further up in the cañon they had another place where they spent the summers with their cows."

On cross-examination (*Ib.*, fol. 109, page 73, *et seq.*), that "they pastured their stock over the mesas from north to south in the Cañada de Cochiti," and "on the west and also in the direction of the southwest"—"in every direction"—they belonged to the Lucero family—nobody else—at that time "there were about twenty or twenty-two heads of families."

On re-direct examination (*Ib.*, fol. 110, page 74) the witness stated that by mutual consent the Cochiti Indians pastured "over all the lands of the grant," and "they" [NOTE.—The heirs?] "were pasturing over to their" [NOTE.—The Indians'?] "lands."

On further cross-examination (*Ib.*, page 74) the witness testified that he was present at Cochiti when consent was given, and that the Indians' stock did not run over the grant lands "indiscriminately all the time."

(8) **Zenon Sandoval** (*Ib.*, fol. 112), aged forty-four, testified that he was one of the descendants of Antonio Lucero, that from early boyhood till 1860, he resided at Cañada de Cochiti, at the house of his grandfather (since dead) and Rafael Serafin Lucero; and further, as follows: "My grandfather used to have meetings with the old people at home; that I could remember. Manuel Hurtado, father of the Manuel Hurtado that is here [the witness, *supra*], Manuel Lucero and Juan Lucero, those being very old people in those times, and they had meetings and talks in reference to the Cañada de Cochiti grant, and I remember—they both said about the boundaries; I do not know what the boundaries were, but I remember that they called the northern boundary the Pueblo Viejo"— * * * "Q. What did they say as to the other boundaries? A. Rio del Norte was the east boundary, the Cochiti lands

of the Indians: of Cochiti was the south boundary, and the west boundary they said it was Jemez mountains." [NOTE.—This witness was required to testify in "English."] He further testified (*Ib.*, fol. 114) that "Salto de Agua" is "where the water flows over a big rock." Asked "Do you know a ranch at the junction of the Cañon de Medio Dia and the Cañon of Cochiti?" he answered "The Del Norte; yes, sir; I never had known of Cochiti until a short time. They used to call [it?] De las Casas and those two cañons joined; they used to call Del Medio Dia and Del Norte where those two cañons joined near Frijoles. Some of the people used to farm where these two cañons are."

This witness gave the tradition (*Ib.*, fols. 115, 116) that the rebellious Cochiti Indians, driven from a former pueblo, made a new one "at Potrero de las Casas," and from there they were driven by strategy, and finally were located where they are to-day. He stated (*Ib.*, fol. 116, page 79) that he was one of the persons who, at the Pueblo Viejo, pointed that out, in May, 1882, to the United States surveyors, as the northern boundary.

On cross-examination (*Ib.*, fol. 117) he said that he never heard that the "Potrero Viejo" was the north boundary—it was "Pueblo Viejo," —and never heard "Cochiti Mesa" mentioned "until now." His language was jumbled, if not unintelligible, in explaining the location of "Potrero del las Casas;" but we understand that he referred to the mesa or protrero to which the Indians retreated.

(9) **Manuel Hurtado** (*Ib.*, fol. 81), recalled, gave part of the genealogy of the Antonio Lucero family.

His "cross-examination" was as follows (*Ib.*, page 85), viz: "Q. Did you ever hear of the Cochiti mesa being located on this grant near what is marked

on this map as the Pueblo Viejo? A. I heard the name mesa used in the grant, but to this other one. Q. What other one do you mean? Do you mean this one on the Cañada Cochiti, the mesa where the old ruins are located? A. That is the one I heard stated by that name in the grant. Q. Is that known as the Cochiti mesa, referring to the one at the Cañada? A. From that day to this one I know it as the Potrero las Casas among the people. Q. Is it also known as the Cochiti mesa? A. I have so heard it called so in the grant. I cannot state positively, though. Q. You never heard of the Cochiti mesa being here at the Pueblo Viejo, though? A. I heard that called the Potrero Capulin. Q. You never heard it called Cochiti mesa? A. I never heard it called the mesa of Cochiti."

On re-direct examination (*Ib.*, fol. 126) the witness testified that the recital in the grant papers is the only occasion in which he "ever heard the word mesa being used with reference to any pueblo."

(10) **Pablo Lucero** (*Ib.*, page 86), aged sixty-six years, testified that he was a greatgrandson of Antonio Lucero, the grantee, that, with the consent of the other members of that family, he was the custodian of the family papers pertaining to the family title to real estate, and that, as such custodian, he had in his possession the original last will and testament of Francisca Jaramillo de Lucero, widow of Antonio Lucero, which he thereupon produced. (Exhibits 4 and 8, *supra: Transcript*, fol. 181, page 121.)

He further testified that, when Mr. Whitney bought, the Cañada de Cochiti grant was occupied and used by descendants of the grantee Antonio Lucero. Asked as to the locality of the northern boundary of the grant, he answered, "I know no other thing except the Pueblo Viejo is the boundary on the north." Asked "Where is the Pueblo Viejo

Cochiti?" he answered, "That which is called that name by the Indians of Cochiti is situated somewhere on the Potrero de las Vacas."

Then the examination proceeded thus: "Q. What are the Indian ruins near the little cañada, near the mesa, at the cañada, the Indian mesa, named? A. They are also pueblo ruins; they went there afterwards. Q. According to tradition, if any you know, when did the Indians go to the pueblo at the cañada? A. They were conquered at those pueblos at the bottom of the cañada and taken down to Cochiti. Q. Was that the last pueblo they went to before they went to the pueblo of Cochiti—the present pueblo of Cochiti? A. After they were conquered, they were taken down to Cochiti and left under the care of a priest, and then they made an attempt to kill the priest and went back again. Q. What was the last pueblo the Indians went to before they removed to their present pueblo? A. That was the last one; they went on the top."

On cross-examination (*Ib.*, fol. 128, page 87), the following occurred, viz: "Q. Is that mesa upon which the old ruins are lying, to which the Indians retreated at the last conquest, called the Pueblo Viejo de Cochiti? A. Also they call that the Pueblo Viejo, because those Indians were taken down before possession was given, and this man was mustered out of the army. He took possession. He asked for possession. Q. Is that the old ruined Pueblo Viejo of Cochiti? A. Of the last one. Q. That was the re-conquest of 1692-5? A. It might be. I do not know the year. Q. It was the time De Vargas conquered them and took them to Cochiti? A. Yes. Q. Aren't there a great many ruins of old pueblos around in that section of the country? A. There are. Q. They call them Pueblo Viejos, don't they? A. Not all of them. Some of them

are called Pueblo Colorado or Pueblo Viejo, and the last potrero is also called Potrero Viejo."

On re-direct examination (*Ib.*, page 88), the witness reiterated his former statement that the old pueblo which is the north boundary is on the Potrero de las Vacas, and also (*Ib.*, fol. 129) located the Arroyo de las Piedras *(supra)* as being about half a mile north of the narrows—the "cañoncito"—of the Cañada de Cochiti; this being the location of the little water fall, "*Salto.*"

(11) **Flavel Simonson** (or Flavier Symington) testified (*Ib.*, fol. 134, page 91) that, traveling up the Cochiti cañon, on his way to the Valles mountains, to the north, he found evidences of old cultivation, etc., in the cañon.

(12) **John Dixon** (*Ib.*, fol. 138, page 94), being recalled, testified that the place to which the Indians retreated the last time is called the Cochiti mesa, and that he never heard the place marked on the map "Pueblo Viejo" called the Cochiti mesa.

10. Not only did we introduce the foregoing documentary and oral evidence, involving the conconvincing declarations of the old owners and possessors, now dead, but we also invoked the solemn oaths of venerable witnesses already passed away—their depositions taken in 1882 before the surveyor-general and made admissible by statute (26 Stat., § 5, page 856). These are the depositions of Mariano Salas, Jesus Maria Cabeza de Baca and Juan Lopez (*Transcript*, fol. 212, page 141; Exhibit No. 5b).

(1) **Mariano Salas** (*Ib.*, fol. 225, page 148) was born in the year 1808, and was consequently about 74 years old when he testified. He swore that his father and grandfather were heirs of the grantee Antonio Lucero; that Juan Antonio Cabeza de Baca was alcalde many years up to 1821; that in 1821

there was a town on the grant, still existent; that José Lucero, Cristobal Lucero, Lauriano Lucero, Telesforo Lucero and all their relatives, heirs of the grantee, had possession of the grant under these boundaries, viz: "North boundary, El Rito de los Frijoles" [NOTE.—Cañon shown on northeast corner of Harris map (*Ib.*, fol. 260), and by Harris' testimony (*Ib.*, fol. 61]; south boundary, the league of the Cochiti Indians; eastern boundary, the Rio del Norte, and the west boundary is the top of the Jemez mountains;" and on cross-examination (*Ib.*, fol. 228), that "since I was born I heard my father say there was such a grant, and, some of the other people there, they also gave the boundaries;" also, as to his knowledge of the grant, that "I know it because I lived there and have been through the grant many times;" that (*Ib.*, fol. 228), when he first knew the grant, "there lived a large number of people on the grant at the Cañada de Cochiti," who were heirs; that (*Ib.*, fol. 229) "the highest mountain west of the Rio del Norte is the Sierra de Jemez" * * * and that has been known as the Jemez mountains "since the people first inhabited the Cañada de Cochiti;" that (*Ib.*, fol. 230), between the Jemez mountains and the Rio Grande on the east, "there are no mountains, but there are mesas and wooded hills;" and, on re-direct examination (*Ib.*, fol. 231), that the mountains, or prominent hills, in their order going west from the Rio Grande, are as follows: "The first mountain is called Sierrita de San Miguel; it is very high; the next, going west, is a peak called 'Cerrito de las Balitas.' This peak is high, but not as high as the first named. The next mountain, going west, is called Cerro del Chato." [NOTE.—*Vide* testimony as to this hill, *Ib.*, fols. 84, 95.] It is not very high. "From there, going west,

there are no mountains until you reach the Sierra de Jemez."

(2) **Jesus Maria Cabeza de Baca** (*Ib.*, fol. 234, page 152), was born in February, 1808, and a son of the alcalde mayor, Juan Antonio Cabeza de Baca. He identified the *testimonio por concuerda* (*Ib.*, fol. 158, Exhibit No. 2) as signed by his father, and the body thereof as in the handwriting of his father's secretary, Juan Esteban Aragon, and proved that his father was alcalde mayor. He also identified the signature of the attendant witness, Luis Maria Cabeza de Baca.

(3) **Juan Lopez** (*Ib.*, fol. 239, page 155), was born in the year 1807. He also proved the authenticity of the said *testimonio por concuerda*. He also swore (*Ib.*, fols. 242, 243) that he knew the tract of land known as the Cañada de Cochiti grant, saying, "I do know such a tract and have known it since I can remember;" that the Luceros were in possession and had so since continued; that he knew the boundary to be on the north "the old pueblo of Cochiti;" on the south, "the Alto de las Cruces and the lands of the Indians of the pueblo of Cochiti;" on the east, "the Rio del Norte;" on the west, "the top of the Sierra de Jemez, so-called;" that he had known these boundaries "for a great many years," saying, "as long as I can remember I have heard them referred to as the boundaries among the people" * * * "among the old people of Peña Blanca and that vicinity;" that he had known the Sierra de Jemez to be so called ever since he was a boy eight, nine or ten years old; that the Sierra de Jemez "is to the west of the pueblo [of Jemez], and is about half a league distant, somewhat more or less;" that the only mountains [NOTE.—"Sierra" in Spanish?] between the Rio del Norte and the Sierra de Jemez and within

the boundaries of the grant is the "Sierra del Valle or Sierra Alta;" that (*Ib.*, fol. 250) he had been at the old pueblo of Cochiti; that from the Rio Grande it is "about a league, more or less, towards the north;" that he commenced to herd stock in 1817; that he acquired his knowledge of the location of the Sierra de Jemez "by hearing it so called by the old settlers," as he "passed through the neighborhood and the pueblo of Jemez which is adjacent;" that the Jemez mountain [sierra?] is west of the pueblo of Jemez, and the other mountains are the Valle mountain and some wooded hills to the north; and that he knew the location of the Sierra de Jemez, and that the Luceros had a grant called the Cañada de Cochiti from "general reputation among the people in that vicinity," and from what others had told him "from about the year 1817 down to the present time, and these are matters of general repute among the people of that section, and have always been so."

(4) **Mariano Sena** (*Ib.*, page 162), being recalled, said that the Sierra de Jemez lies west of the pueblo of that name, and that the Sierra de Valles is to the north.

Evidence on the Part of the Government.

The only documentary evidence introduced on the part of the defense were the final report of Prof. A. F. Bandelier, the archæologist, marked "Defendant's Ex. A" (*Transcript*, fol. 139, page 96), the photograph Exhibit 6 (*Ib.*, fols. 146, 256), and the instrument at the foot of the *testimonio por concuerda* (*Ib.*, fols. 161, 171).

[NOTE.—In the original Spanish (*Ib.*, fol. 161), the verb "*ceden*" is plural and in the third person. The instrument seems to import a conveyance by the heirs of equal rights in the grant to other residents.]

And the only oral evidence, so introduced, was the testimony of Will M. Tipton (*Ib.*, fol. 139), L. A. Hughes (*Ib.*, fol. 147), and W. S. Loomis (*Ib.*, fol. 150).

(1) **Will M. Tipton** (*Ib.*, fol. 139, page 95) testified as to his acquaintance with Prof. Bandelier and as to the professor's having been "out there" with the Cochiti Indians; also as to his absence in South America. We admitted "the care, prudence, as well as general knowledge he displayed in collecting his data, etc., for his reports." (*Ib.*, page 96.) [Thereupon the government offered "to read from the final report of Prof. A. F. Bandelier, as a matter of archaeological history of the American Indians, —from chapter IV, page 139." To this, objection was made on various tenable grounds, but, afterwards (*Ib.*, fol. 144), counsel withdrew the objection and said, "I am perfectly willing to have Mr. Bandelier's work stand in this court as well as he would if he were here on oath."]

Then Mr. Tipton further testified as to the situation of the ruins on the tableland or mesa and said that, if a line were drawn east and west through the *northerly point* of those ruins, he thought that all the land he "saw under cultivation" would lie south of that line; that the mesa runs in a northwesterly line; that back of that mesa is another much higher which "runs still further in a northwesterly direction back towards the mountains;" that as to this higher mesa "the general character of that second bench * * * as seen from a greater distance from the east side to [NOTE.—of?] the Rio Grande river appears to be a country having a gentle slope and not very rapid rise towards the mountains until it reaches the point of what I call the mountains proper;" that the "foot of that mountain" is "perfectly defined;" that the present settlement of the Mexican pueblo (Mexican

town) is "somewhere about a mile" from "the southeast point of the mesa;" that from the Mexican town east to the Rio Grande is about five miles; that from the southeast point of the mesa to where the second bench rises, was between half and three-quarters of a mile; that there were not over one hundred acres on the first bench; that two fanegas of corn and ten of wheat, land measure, would be a little less than thirty-three acres; that, in his opinion, the ruins "nearest to the point of the mesa were older than those which were further back near the foot of the second bench," and that the "ruins nearest to the point of the mesa were very much older than the others."

Hereupon the witness marked the photograph (Exhibit No. 6; *Transcript*, fol. 256) by putting "1," to represent the "Cañada de Cochiti at a point where it comes out from the deepest part of the cañada;" also directly north of the ruins of the old pueblo on top of the mesa; "2," to represent Pino Cañon; "3," "3," "3," "3," [four times]—the "3" on the left hand to represent the Arroyo of the Peralta "where it may be seen from the point where this photograph was taken;" "the other three figures three" to "represent the top of the ridge which lies along the northern and northeastern side of Peralta cañon;" the figure "4" to represent "the Cañon del Alamo;" the figure "5" to represent "the position of the present Indian town of Cochiti."

(2) **L. A. Hughes** (*Ib.*, fol. 147) described the potrero on which are situated the ruins, marked "Ruined Pueblo" on the Harris map, and testified that on top of that mesa, in the neighborhood of half a mile toward the northwest, were the ruins of an old pueblo covering probably a space of ground two hundred and fifty feet long by one hundred and fifty feet wide. Towards the southeast, near the

plaza, is the remains of the other ruins." He added (page 102) that a line drawn east and west "as far as this point on the northeast side of this potrero, would leave all the agricultural lands below that line;" also, that "the ruins towards the southeast point of the potrero are much older than the others, towards the southeast corner of the potrero are simply mounds of earth that are characteristic of such ruins, and the first are of stone four or five feet from the ground the entire length of the ruins."

On cross-examination he said, "The oldest ruin is at this point here" [indicating the southeast point of potrero].

(3) **W. S. Loomis** (*Ib.*, fol. 150, page 103) testified that he was a civil engineer residing at Bland [a settlement made on our grant in 1894]; that he knew the location of the ruins of an old pueblo on the point of the mesa next to the present plaza of the Cañada de Cochiti; that he had occasion to "run a line from east to west from the point where they are located to the Rio Grande river;" that the agricultural lands in the Cañada de Cochiti would fall south of that line; that he "run that line from the northeast corner of the present survey of the Indian pueblo of Cochiti to this point of this mesa where those old ruins are located;" that "from the northwest corner of the pueblo of Cochiti grant to the northeast corner of this line is 8,190 feet; it is 43 minutes west of north;" that the amount of land between the Rio Grande, the north line of the pueblo, and up to the pueblo located on the line of the point of the mesa to where he "run that line" is 5,000 acres.

On cross-examination (*Ib.*, fol. 151, page 104), the witness admitted that he had run his line from the *northeast* corner of the ruins—a point which he said "is about 200 to 225 feet, something like

that," from the most southern point of the ruins. He further testified that he had surveyed mining land, and that he got his living at Bland. Asked if he had "been employed by any squatters or trespassers to run lines?" he answered, "Well, I have run a good many lines," and he added that he had "done some work for the Allertown townsite people and for Mr. Bailey, and had surveyed some for Mr. Lowthian, a gentleman residing in Bland and then sitting in the court room, who had told him "where an east and west line would strike" before he sighted his instrument, and that he had not done any surveying for Mr. Whitney or any grant owner.

The government then rested, and the claimants recalled **Willian Harris** (*Ib.*, fol. 154, page 106) and had him draw a line on the map to run east and west "immediately south of the ruined pueblo on the mesa," as laid down on the map.

On cross-examination, the witness said that the farming lands just above the Cañada Pueblo were platted approximately on the map.

The witness, over our objection, was allowed to indicate on the map "Gold Hill" and "Mineral Monument," and to testify that one Barnes had made the "Mineral Monument" for "the purpose of locating claims * * * mining claims." The question was then asked, "In what district is that?" and answered "Cochiti." Thereupon we objected "because it is assuming the existence of a legal mining district of land *sub judice*."

On re-direct examination the witness testified that he first heard of an attempt on the part of anybody to set up a mining district in the vicinity of "Gold Hill" in March, 1894. He further testified that the approximate distance between the south boundary indicated on the map and a line east and west immediately south of the "Ruined Pueblo," is

seven thousand feet, a little over a mile; also that "there is some land north of that line" [above mentioned east and west line] "that bears every appearance of having been cultivated."

This closed the evidence on both sides.

The opinion of the Land Court (*Ib.*, fol. 370, page 243), while it does not deny the authenticity of the *testimonio por concuerda* issued by the alcalde mayor, Baca, in 1817, nor that of the formal adjudication of the alcalde mayor, Armenta, in 1785, rejects them both in a summary way, arbitrarily characterizes the proceedings before the former as one "to restore" the muniments of title—"against the crown,"—"to create evidence to deprive the crown of title to its lands," declares that "alcaldes had no jurisdiction of any proceeding against the crown, and could not by any act of theirs, without express authority in the particular case, affect the title to crown land."

"Therefore," this opinion declares, "the certificate of the alcalde is not to be taken as *any evidence* of what the grant document originally recited as to the west boundary." It adds: "We are aware of but one way by which the document could have been legally restored, and that was by the act of the granting power, and the archives show that it was not unusual for the governor of the province to restore and revalidate grants under like circumstances." [Our answer to this ruling of the court is found in our FIRST POINT, *infra*.] It continues: "The circumstantial evidence in the case is not sufficient to satisfy us that the west line of the grant was intended to be the main line of the Jemez mountains. We do not feel justified in reading the document inserting the word 'mountain.' The original may or may not have contained that word. The

case is not aided by evidence of practical location. There is some evidence to the effect that the stock of the descendants of Lucero grazed as far west as the Jemez mountains, but practical location means the acts of the parties to the instrument, and not the acts of parties generations distant from them. Moreover, from a practical standpoint, the grazing of stock in this country has no value as evidence of practical location. There was also evidence that the west boundary was reputed to be the Jemez mountain; but when we consider that this repute was based upon the void certificate of the alcalde, and not upon facts of actual occupancy, it fails of convincing force." [*Vide* our FIRST POINT, *infra*.]

Then the opinion (*Ib.*, fols. 373, 374, 375) proceeds to discuss the question of the identity of the "Old Pueblo of Cochiti," mentioned in the grantee's petition, and theorizes on that subject, in total disregard of the pregnant facts so abundantly shown by our uncontradicted oral testimony, proving the consistent recognition from time immemorial of the Pueblo Viejo on the Potrero de las Vacas as our ancient northern landmark, and, also, in total disregard of our ancient documents.

It says very cogently, "The language of the petition is significant. The point of identification of the tract asked for is the mesa of Cochiti. Here, then, is a mesa which has a well-understood name which it has derived from the association of some fact or circumstance. Its *north side* forms the wall of a cañon, through which flows a stream, both bearing the name of Cochiti." All this is undeniable; but the opinion adds: "Upon this mesa was situated an *old pueblo*." The evidence, however, shows that, although, in very early days, Indian abodes, now crumbled into mounds, may have existed on all the mesas or potreros in that strange country, never-

theless, the ruin existing on the "Mesa de Cochiti" in 1728 was not *then* an object of antiquity. It was the last pueblo which the Cochiti Indians had built, and its was, *then*, not a mouldering relic of venerable age, but only the burned remains of the shelter made by the retreating Indians, after one of their conflicts in the bloody revolution, which, beginning with the overthrow of Spanish power in 1680, ended in the "re-conquest" many years later. That power was not fully regained until some time between 1692 and 1695.

The opinion continues: "Lucero's petition states that to that place the Indians retreated when they rebelled—that is, they went to that place to reside during their insurrection. History informs us that it was the Cochiti Indians who resided there, and that one of the most interesting and prominent facts of New Mexico history occurred upon that same mesa—within that same old pueblo—in relation to the Cochiti Indians, namely, the final overthrow of the Indians on the re-conquest of New Mexico. It was this fact, then, which gave names to the mesa and the cañon and the stream, and how could it fail to impart the same name to the old pueblo? History, as well as the evidence in this case, shows that it did so."

This speculation as to the origin of terms may or not be correct, but it remains a mere speculation. Long before the Cochiti Indians had built their abode on the "Mesa," they had lived at an older pueblo on their present site on the Rio Grande, and the stream or "rio," called by the Spaniards "Rio de Cochiti," may well have got its name in the sixteenth century from the fact that it flowed into that old home of the Cochiti Indians, just as the "Rio de Jemez" is so called because it flows through the Pueblo de Jemez, and the "Rio de Taos" is so called

because it flows through the Pueblo de Taos, and the "Rio de Pecos" is so called because it flows through the abandoned site of the Pueblo de Pecos. These names of rivers are Spanish, and they were doubtless applied long before 1600. They were so applied in direct reference to the actual Indian villages of the time; and it cannot be pretended that, before the revolution of 1680, the Indians of Cochiti occupied in Spanish days the mesa or potrero where they took refuge during the subsequent conflicts with the crown. But for ages before the revolution of 1680, and while the Indians of Cochiti still resided at their pueblo on the Rio Grande, the old pueblo, which is our northern boundary, was a prominent, visible, stone landmark, venerable and even dreaded as a prehistoric ruin of uncanny traditional associations.

At the same time, it is true, as said in the opinion, that the events of Spanish local history, referred to in the opinion, gave prominence to the "mesa" or "potrero" which had been the scene of the bloody tragedy recently enacted. Consequently, that mesa was referred to by the soldier petitioner, not simply as the "Mesa de Cochiti,"—that was not then sufficiently definite—but as the "Mesa de Cochiti to which the rebellious Indians retreated." It did not occur to him to style the mesa "the old mesa," any more than to style the recent ruins there "the old pueblo." That kind of nomenclature awaited the progress of the evolution of usage, and the usage which resulted has, except in recent years, attributed antiquity and importance to the mesa rather than to the ruins which it bears. For instance, as remarked by Bandelier and some of our witnesses, the mesa came to be styled "el Potrero Viejo"—"the old Potrero," (or the old *mesa*), while, as to the ruins now existing there, the common name current among the Mexicans is associated with the mesa, or potrero,

as well as with the ruins; for it is "Potrero de las Casas" or "Potrero of the Houses," or (occasionally) "Potrero Viejo," (*Transcript*, fols. 95, 99, 103, 118, 128).

Since the Spanish governors made visits all over their jurisdiction, it would be hasty to assume that they were not informed of the remarkable prehistoric ruin so long venerated as the Pueblo Viejo.

The opinion (*Ib.*, fol. 375) thus disposes of our uncontradicted and conclusive evidence as to the immemorial and customary repute concerning our northern boundary: "There was evidence that by general repute the north boundary was located at the northern pueblo spoken of in the case as the Pueblo Viejo. Evidence of general repute as to the location of a boundary is entitled to consideration. The general repute proven in this case, in its source and in its extent, was confined to the descendants and successors of the original grantee, chiefly the owners of the grant, and interested in the expansion of its limits. Under such circumstances we cannot regard this evidence of much convincing force."

Finally, the opinion (*Ib.*, fols. 375, 376), admitting that the adjudication of the alcalde mayor, Armenta, in 1785, is in conflict with the new-sprung theory of our northern boundary, cavalierly rejects that important evidence on the same ground upon which it threw out the *testimonio por concuerda;* declaring that "to have any effect as evidence this proceeding of the alcalde must be considered in the light of an adjudication against the crown or as an admission binding on the crown," etc.

We show in our THIRD POINT and FOURTH POINT, *infra*, the competency, relevancy and conclusive effect of our proofs establishing the northern boundary at the Pueblo Viejo de Cochiti on the Potrero de las Vacas. In view of the overwhelming mass of evi-

dence which we have above digested, and which remains uncontradicted in the case, as well as of the well established rules of evidence so familiar to this court, we submit that the opinion of the Land Court, while pragmatic and confident, was evidently prepared with precipitation, and without due pause for thorough examination of the evidence, or even for cursory investigation of the legal doctrines involved.

FIRST POINT.

The testimonio por concuerda, or certified copy of the testimonio of the grant, was competent evidence, being: First, good evidence of instrumental title; secondly, good evidence of immemorial claim and possession; and thirdly, an ancient instrument among our muniments of title, furnishing an important link in a chain of relevant circumstances.

I.

A. The court will take judicial notice of the fact that, in the absence of royal and public notaries or clerks *(escribanos reales*, or *escribanos publicos)*, the alcaldes mayores exercised similar functions in the province of New Mexico. In the archives of Santa Fé appear hundreds of instruments "celebrated" or "solemnized" before alcaldes mayores, acting professedly in default of notaries. Many of the old conveyences exhibited in the present case prove this provincial custom. Although, by Lib. V, Tit. 8, Law 1 of the *Recopilacion* (2 White, 57), cautious provisions were made regarding the appointment of royal clerks *(escribanos)* to draw public instruments, etc., requiring such officials to be appointed by the royal person, or by "such others as are empowered by our special license and author-

ity" (2 White, 58), yet the last clause of the law contained a provision permitting viceroys, presidents and *governors*, in certain emergencies, as in new settlements and in cases of death or disability, "to appoint, in the cases just referred to and in no others, as clerks *(escribanos)* of the *numero* and council, such persons as, being able and sufficient, may appear to them duly qualified to discharge the duties of those offices," etc., of all which it was thereby made the duty of the governor, etc. to advise the king through the council of the Indies. Since no person could question a viceroy or governor, but every subject in his jurisdiction was bound to obey him (1 White, 367, *et seq.*), "because, as Carolo Pascalio says, and Calisto Ramirez, subjects have no obligation to investigate or know the orders and instructions of a secret nature which are given to a viceroy, in which bounds are put to their power, for if they do not obey them they are subject to reprehension or punishment, but what they may perform must be sustained, because they are in quality of factors or substitutes to royalty," and since the acts of the governors (especially in "distant provinces") must be presumed rightful in all cases in which they are invoked to sustain a title, even though such acts are apparently violative of published orders of the king (*Strother vs. Lucas*, 12 Pet., page 438), we are bound to assume that an official practice continued for generations in a "distant province," with the knowledge of the governor, must have had his sanction and, presumptively, the king's.

It will be noticed (*Transcript*, fol. 198) that Cachupin, governor and captain-general, executed a decree "with two assisting witnesses in the absence of notaries, of which there is none in this government."

"Every writing executed by the hand of a notary public of the council * * * is an authentic act *(escritura)* which is of itself full proof."

Citation in *Sabariego vs. Maverick*, 124 U. S., at page 290, from *Partidas*, tit. 18, law 1.

B. Notaries, both royal and public, were vested with *quasi*-judicial faculties in the issuing of evidences of title, and the king was regarded as constructively present in all such proceedings (1 White, 345, 346; 2 *Ib.*, 739). Sometimes, when so acting judicially, they were styled "Jueces Receptores" (*Vide*, Ex. 14, fol. 289) *Vide* Escriche: "RECEPTOR. El escribano que en virtud de facultad ó comision de un tribunal sale á practicar diligencias judiciales."

The term "Juez Receptor" seems to designate a judicial officer who is the recipient of some special or extraordinary delegated authority, and the alcaldes mayores, in jurisdictions lacking royal notaries, acted expressly or otherwise as "jueces receptores," as we find them to have acted in the "solemnization" of several of the instruments in evidence.

C. In transactions before notaries involving the making of public instruments of title, contract, or the like (that is, such as have a record "matrix"), the notary, in the presence of the parties, first made a rough draft, on common [unsealed] paper, of the instrument intended. This memorandum was then extended by him in his "protocol" or "registro" —his public official record—which might be a book already bound, or else might be loose leaves of sealed paper which it was the duty of the notary to bind together at the end of each year. This protocol or register was the real original of such transactions, in

the same sense that the record of a patent in our land office is the real original. Although each instrument, so made a record, was signed by the parties concerned, together with their witnesses, it was not customary for the notary to sign it specifically; his official certificate appropriately appearing at the close of the book, when, at the end of each year, he there subscribed a formal certificate declaring that the book contained the record of all such transactions had before him during the preceding year. This protocol, register, or record, was called the "matrix," because it was the official womb out of which was born such written evidence of the transactions concerned as was committed to private hands. This evidence was in the form of a copy from the record, duly authenticated by the same notary. The first copy was, for the purposes of evidence, called the "primordial" or "original," and it was entitled to full faith and credit in all tribunals. Where no evident prejudice could occur, as in cases of instruments of conveyance (duplicates never working injury in such cases), other like copies might be issued by the notary, each of which was primary evidence, in the same sense that our letters patent are primary evidence.

(Escriche, "*Instrumento Publico.*")

D. Of course, the notarial law and practice to which we have above referred related strictly to titles, contracts, etc., which originated before a notary and of which he preserved the "matrix"; but, in case of a grant made by the crown through its governor, etc., the "matrix" or an analogous record would remain in the office of the granting officer. Still, in the latter case, as well as in the former, the title papers delivered to the grantee,—sometimes called the "testimonio"—would be a *quasi* "original," in the sense of the notary's pri-

mordial copy or of our letters patent, and would be primary evidence. *Gonzales vs. Ross*, 120 U. S., page 623.

Sometimes, such a *testimonio* has been inaccurately called "secondary evidence," as in *United States vs. Davenport's Heirs*, 15 How. 7. However, this formal question is immaterial here, 1st, because the government, by its answer (*Transcript*, fol. 28), denies that the originals of the granting decree and act of juridical possession were "placed in the royal archives;" which denial is naturally based on the fact that they are not there now, because the archives have been despoiled, wasted and in great part lost, by the fault and constructive fraud of our government's officials, as was proved in the case of *United States vs. Chaves*, 159 U. S., pages 462, 463. Similar spoliation occurred in Florida, (*Pet. 348*).

E. According to the notarial law and practice, it was sometimes a matter of necessity or great convenience, as in the case of the loss or destruction of the matrix, or of the age or dilapidation of a "primordial" copy or "original" of an instrument of title, for example, to obtain an official copy of the latter, as a muniment of title, or for evidential purposes. Such secondary copies might be made by the notary who had formed the matrix, without immediately referring to that record, and, when so made, they had, as evidence, the same effect as an "original," in case they were of the class whereof a party could demand several copies to be made from the matrix. But if such secondary copies were made by another notary (a stranger to the forming of the matrix), they were evidence only against the party producing them, *unless made under judicial authority and upon citation of the adverse party*, or unless they were *thirty years old* and possession of property had for that time been held on the faith thereof. The

judicial authority who could authorize such a secondary copy and give it effect as primary evidence, was the *alcalde mayor*, who was the judge of first instance. Such an officer could even judicially compel a notary to give a new copy from the matrix when the old copy was worn or torn, even though the instrument might not be of the class whereof a party could, on his mere demand, procure a new copy directly from the notary.

Escriche says *(Ib.)*: "Puede en tal caso el acreedor ó interesado acudir en solicitud de nueva copia ante el juez de primera instancia del partido en que este protocolizado el instrumento."

A secondary copy of an instrument of title, or the like, was called the "*traslado*," or "*transunto*," or, more commonly, "*testimonio por concuerda*." It is significant how much importance was attached to the intervention of the *alcalde mayor* of the district in the legal sanctioning of such copies, as well as how much importance was attached to a long possession under such a copy.

Escriche says *(Ib.)*: "El traslado antiguo, sacado por cualquiera escribano, aun sin decreto de juez ni citacion de parte, se considera digno de fé cuando en virtud y á consecuencia de él se dió posesion del derecho pretendido ál que le presenta ó á su causante, bastando el trascurso de treinta años." (*The traslado antiguo* (ancient copy), made by any notary whatever, even without judicial order or citation of parties, is considered entitled to faith, when, in virtue and consequence thereof, possession of the alleged right was given to the party presenting it, or his predecessor in title; the lapse of thirty years being sufficient.)

We know of no reason why these old rules of Spanish law should not be held to furnish a principle applicable to official secondary copies of grant mu-

niments, when made by royal or public notaries,—*a fortiori*, when made by the highest judicial and political officer of the appropriate district or jurisdiction. (*Vide, infra*, "F;" also *Cacazas vs. Trevino*, 6 Wall. 773, and *United States vs. Heirs of Delespine*, 12 Pet. 654.)

F. The alcalde mayor, Juan Antonio Cabeza de Baca, was a lettered man (*hombre letrado*) exercising within the partido or district wherein our grant was situate the highest political and judicial functions.

1. Under the head of "Alcalde Mayor," Escriche says, "En los reinos de nueva España era el que goberaba por el rey alguna pueblo que no era capital de provincia, aunque no fuese juez de letras."

2. Ordinarily, however, an alcalde mayor was "a lettered judge who exercised the ordinary jurisdiction in any pueblo or district." (Escriche, "Alcalde Mayor.") The alcaldes mayores "consequently decided civil and criminal causes; and, besides, they were charged with the inspection of all economical and political matters" (*Ib.*). In the royal cedula of the fifteenth of May, 1788, for the government of alcaldes mayores and corregidores, are contained sixty-five articles which are digested by Escriche (*Ib.*), indicating the devolution on these high officials of the most important judicial and administrative faculties.

Evidently, they exercised judicial functions equivalent to those of our courts of general common law and chancery jurisdiction, and consequently their official acts are entitled to the same presumption of jurisdiction and regularity.

It is a common and very gross error for American lawyers to belittle the old Spanish alcaldes, as

if they were very inferior magistrates, no higher in degree than our justices of the peace. The opinion of the Land Court evinces on this subject a tendency to indulge in *persiflage*. (*Vide*, Hall, Mexican Law, § 13.)

6. While we contend that the *testimonio por concuerda* issued by the alcalde mayor, Juan Antonio Cabeza de Baca, was a "public instrument" (*instrumento publico*) importing at least *prima facie* verity, it can also be supported as an "authentic instrument" (*Vide* Escriche, "*Instrumento Autentico*"), which equally imports verity; for it comes within the second and fourth classes of authentic instruments mentioned by Escriche, viz:

"2º, los documentos hechos ó expedidos por algun oficial ó funcionario en las cosas pertenecientes al oficio que ejerce con autoridad pública" (the documents made or issued by any official or functionary in matters pertaining to the office administered by him under public authority).

"4º, los documentos que estan comprobados ó corroborados por la autoridad de muchas personas ó por la observancia de largo tiempo ó por la costumbre del lugar" (the documents which are sanctioned or corroborated by the authority of many persons, or by recognition for a long time, or *by the custom of the place*).

The precedents of our own forum are in remarkable harmony with these Spanish rules of evidence, regarding ancient instruments accompanying long possession of property.

11. If the copy of the grant papers made from the *testimonio* by the alcalde mayor, Baca, in 1817, is assumed to import an executive act, or one merely *quasi*-judicial, such as was appropriate to a public or

royal notary, still there never having been any notary in the province or kingdom of New Mexico (*Vide*, recitals, *Transcript*, fols. 198, 211, and all the ancient conveyances marked as exhibits) and the laws, usages and customs having devolved the functions of that class of officers on alcaldes mayores, it must be presumed that the copy authenticated by Baca, as alcalde mayor, has all the evidential importance attached to like acts emanating from a royal notary. It is unnecessary to attempt to trace the specific origin of the exercise of notarial functions by alcaldes mayores, since the immemorial custom of the province, evidenced by numerous papers in the archives and many old instruments exhibited in this case, sanctioned, in replacement of the terms of the old law, such official action by alcaldes.

Adams vs. Norris, 23 How. 353.
United States vs. Arredondo, 6 Pet., p. 714.
Strother vs. Lucas, 12 Pet. 436, 437.
Slidell vs. Grandjean, 111 U. S. 412.

1. But the authentication was rather a judicial than an executive act and quite appropriate to the functions of a judicial officer or tribunal. It was an adjudication *in perpetuam rei memoriam* made in a tribunal in which the king was constructively present (2 White, 739), and in the immediate view of the old documents—the *res*, eighty-nine years old,—and of those interested in perpetuating them as evidence, as well as of official attendant witnesses. Inspection of the archives, as well as of our old exhibits, will show that attendant witnesses were invariably used, in default of notaries, to attest both judicial and administrative acts, not only of alcaldes mayores, but also of the governor himself (*Vide*, *Transcript*, fols. 198, 211).

In our opinion, most of these transactions, "solemnized" before the alcaldes mayores, pertained to their inherent jurisdiction, and might have taken place before them, even when a notary was present—the notary acting in such cases only as a clerk to the judicial authority; and, therefore, the constant reference by alcaldes mayores to the absence of notaries in judicial proceedings was made only to give a legal reason for employing "attendant witnesses" as clerical substitutes for non-existent notaries.

J. The opinion condemns the action of the alcalde mayor in issuing the *testimonio por concuerda*, on the ground that it was a proceeding "against the crown"—a proceeding "to create evidence to deprive the crown of title to land." This reasoning is utterly fallacious and very circular. The proceeding was not "against the crown." It was rather a proceeding by the king in the administration of the laws, customs and usages of his realm, and in furtherance of justice. As well might every judicial or administrative act affecting the title or possessions of private persons be called a proceeding against the government. As well might our state laws providing for the record in county offices of United States patents, and making such records *prima facie* evidence of the existence of the patents, be held "void" as against the government, and such records be condemned forever as evidence against the government, no matter what the subsequent lapse of time, or what the emergency that had rendered them, as ancient writings, the best evidence obtainable. (*Campbell vs. La Clede Gas Co.*, 119 U. S. 445.) As well might an old possession, with its attendant conveyances *inter vivos*, its testaments and administrations, its litigated causes between

individuals contending for the right of possession, and all like "acts of ownership" suggesting a claim of private title, be inadmissible in evidence as factors of a beneficial presumption of private title, because they are "against the crown," or tend as evidence "to deprive the crown of title to lands." Yet just such facts were persuasive on this court as evidence tending to support the presumption of a grant and prove the boundaries, in the case of *United States vs. Chaves*, 159 U. S. 452.

This court, in passing on Spanish or Mexican titles, has attached great weight to adjudicatory acts affecting private claims, and held such adjudications, accompanied with long possession, to imply an antecedent grant.

Thus, in *United States vs. Roselius*, 15 How. 36, the court said, at page 38:

> "For undoubtedly, if the possession of the land has been held continuously by the petitioner and those under whom he claims under judicial sale by the French authorities in 1760, the legal presumption would be that a valid and perfect grant had been made by the proper authority, although no record of it can now be found."

In *Gonzales vs. Ross*, 120 U. S. 605, the court, at page 623, cited with apparent approval the greater part of the following extract from the case of *Henrick vs. Jackson*, 55 Texas, 17, at page 27:

> "The title by Lessasier purports to have been extended in virtue of a concession in sale by the governor to Aguirre for eleven leagues of land, of date fourteenth day of June, 1830. The *testimonio* of this concession does not appear in or form part of the *expediente* by the alcalde, as was customary and usual in the extending of such titles by

> this officer. But we know of no authority for saying that the title is void because he has not incorporated into it the evidence of the concession or sale. If there was, in fact, no concession, there could have been no legal grant by the alcalde. But, whether there was a concession, and whether there was proper evidence of it presented to him by the interested party, was a matter for his official inquiry and determination. Whether he set forth in the title the evidence upon which he acted, or merely recited as a fact that a concession had been granted, and authority given him by the governor to extend the title, the presumption which is always indulged in favor of the validity of the acts of officers of a former government warrants the conclusion that the officer acted in conformity with law and not in violation of it."

In *Strother vs. Lucas*, 12 Pet. 410, the court said, at page 435:

> "By the record evidence before us of judicial sales, which, by the admitted laws of Spain, transfer to the vendee both title and possession, in virtue of adjudication, which, after the lapse of fifty one years after one such sale, and thirty-seven of the other, we must, on every principle of law, take as importing absolute verity in all things contained in such record, and not suffer it to be questioned."

In this connection, the court will notice (*Transcript*, fol. 153) that the government itself put in evidence the adjudication of sale appearing on the *testimonio por concuerda* "so as to complete the title papers before the court."

K. In *Sabariego vs. Maverick*, 124 U. S., at page 280, the court cited the Arrendondo case, 6

Pet. 691, as declaring the law of presumption *against* the crown in cases of Spanish grants, but denied that the principle there enunciated could be extended collaterally to a substantive jurisdictional fact whose existence was essential to the forfeiture or divestiture *by* the crown of the vested title of a subject; saying, as to the Arredondo and kindred cases (*Ib.*, page 283):

> "But in all these cases the question was whether the documents, with the recitals therein, and the presumptions of law and fact arising thereon, shown to have been executed by officers of the government, within the apparent scope of their authority, were sufficient in the first instance to show that the *title of the government* assumed by them to exist passed by the conveyance which undertook to transfer it. In no case, however, have they been held sufficient where the fact in issue was whether the government at that time *had any title to convey*, to establish the fact in dispute, as against parties claiming a pre-existing adverse and paramount title in themselves. All that can be reasonably or lawfully claimed as the effect of such documents of title is that they pass such estate, and such estate only, as the government itself, in whose name and on whose behalf the official acts appear to have been done, had at the time, but not to conclude the fact that the estate conveyed was lawfully vested in the grantor at the time of the grant."

Therefore, we may well assume as the law solemnly expounded by this court (*Ib.*, page 281, citation from the Arredondo case) that "this or no other court can require proof that there exists in every government a power to dispose of its property; in the absence of any elsewhere, we are bound to

presume and consider that it exists in the officers or tribunal who exercise it by making grants, and that it is *fully evidenced* by occupation, enjoyment and transfer of property had and made under them, without disturbance by any superior power, and respected by all co-ordinate and inferior officers and tribunals throughout the state, colony or province where it lies."

Indeed, in dealing with official powers originating under foreign laws, customs and usages, we always assume *prima facie* the validity of official acts. While, for the purpose of adjudicating titles originating generations ago under Spanish jurisdiction of a district of country since ceded to us, we assume that the old Spanish *lex rei sitae* has become incorporated into our own jurisprudence, nevertheless we ought to treat Spanish adjudications of title, or of proceedings relating to title, which occurred there at a remote period, with at least as much consideration as we would accord to them as foreign judgments had no cession been made.

> *Elmendorf vs. Taylor*, 10 Wheat. 152, 159, 160, cited in *Hilton vs. Guyot*, 159 U. S., at page 194; *Ennis vs. Smith*, 14 How. 400, at page 430.

While, under our written constitutions and specific statutory provisions, formulated in times comparatively modern, we may be justified in denying *de facto offices* and *de facto* jurisdiction, as distinguished from a *de facto* occupant of an admitted office (*Norton vs. Shelby County*, 118 U. S. 425), our courts have never regarded this restricted rule, based on constitutional limitations, as applicable to customary offices and functions in the Spanish provinces, or even to offices existing in England under common

law prescription. The presumption of authority attending official acts, long unquestioned, performed under a non-constitutional government, and especially under an absolute autocracy, has been uniformly upheld in an unbroken line of decisions, beginning before that judicial land-mark, the Arredondo case, and extending to the present time.

K. Even had the instrument been extra-official, it would have been admissible in evidence, especially in view of its great age, as, 1st, a solemn declaration of reputation of title and boundaries, pertaining to a tract in the possession of the claimants, made on the land by five disinterested persons, since deceased, namely, the alcalde mayor, Juan Antonio Cabeza de Baca, Juan Gonzales, Sebastian Salas and Luis Maria Cabeza de Baca.

Morton vs. Folger, 15 Cal. 275.

In the cited case, wherein Chief Justice FIELD wrote the opinion, the deposition of a deceased surveyor was held competent evidence to prove a boundary of the Sutter grant. The court said:

> "The question then is, can the testimony of the deceased surveyor, as to the eastern and southern boundary lines, or rather in the present case as to the southern line alone, be admitted. It is, of course, of no higher weight than hearsay, and, if received, it must be as evidence of that character. It has been long well established that such evidence is admissible on questions of ancient boundaries. In England, the evidence is limited to boundaries of parishes, manors and the like, which are of public interest, and is not allowed to establish the boundary of a private estate unless the latter is identical with that of a public or *quasi-*

public nature. (1 Greenl. Ev., § 145, and authorities cited in the note.) In this country, the admissibility of this kind of evidence is carried to much greater length than in England. It has been uniformly maintained when the tract originally surveyed was large, and was subsequently subdivided into numerous farms, the boundary of the original tract serving as a boundary of the several farms. In cases of this kind, the principle upon which the evidence is received has been regarded as similar to that which relates to boundaries of a manor or parish. * * * In such cases, evidence of reputation or hearsay is received from necessity, for the protection of the rights of parties. It is not necessary, however, according to the authorities in the majority of the American states, that the hearsay, to entitle it to be received, should be general, or relate to boundaries in which the public or numerous persons are interested. It may be limited to particular facts embracing the declarations of a single individual, provided such individual had, from his situation, the means of knowledge, and was disinterested in the matter, and may relate only to the boundary of a private estate."

Thereupon, the learned justice quoted from several precedents, *Sassen vs. Herring*, 3 Dev. 340; Great Falls Co. vs. Wooster, 15 N. H. 412; *Cauffman vs. Congregation of Cedar Spring*, 6 Binn. 63; *Spear vs. Coate*, 2 McCord, 227, and 3 Cow. and H. Notes to Phillipps' Ev., note 189, and added:

"This being the case, their admissibility cannot, of course, be affected by the fact that they are reduced to writing and were made under the sanction of an oath in a judicial proceeding. These circumstances, if they have any weight, must augment the

> confidence reposed in the accuracy of the declarations." Citing: *Long's Lessee vs. Pellett*, 1 Har. & McH. 531; *Weem's Lessee vs. Disney*, 4 Har. & McH. 157, and *Lessee of Montgomery vs. Dickey*, 2 Yeates, 212.

In *Morton vs. Folger*, *supra*, it was important to locate a boundary of Sutter's grant, which was a concession of eleven leagues in the establishment "named New Helvetia." The evidence sanctioned was the declarations "of parties who resided in the country as early as 1846;" that certain territory "was known and recognized by every one throughout the country as New Helvetia; that Sutter had entire and undisputed possession of the same; that no one ever pretended to question his right until 1850; and that the premises in dispute were within his inclosures at the fort."

The opinion added:

> "The evidence thus produced would have been in connection with the declarations of Vioget, which were excluded, *prima facie* sufficient, if not conclusive, that the premises in controversy were covered with the grant."

And, secondly, the declaration of the heirs, parties in interest, seriously engaged in asserting and pointing out their boundaries.

> *Hunnicutt vs. Peyton*, 102 U. S. 333.
> *Clement vs. Packer*, 125 U. S. 309, 325.

To "point out" the Sierra de Jemez, it was not necessary to be on its summit, for the sky-line formed by that mountain range could be best indicated from a distance.

II.

Long continued adverse possession and claim—in our case maintained for nearly one hundred and seventy years from the date of the grant and nearly eighty years from the date of the *testimonio* issued by the alcalde mayor, Baca—are the foundation of both prescription and a presumption of grant.

United States vs. Chaves, 159 U. S. 452.

Consequently, the *testimonio por concuerda*, whatever its original value as a muniment of title, became with the lapse of time an important factor as color of title tending to characterize our claim and designate the extent of our possession thereunder.

Escriche defines "*Título Colorado*" as "That which is founded on any appearance of reason and justice; that which has the appearance of good faith, but which is not sufficient by itself alone to transfer property, without the aid of presumption and prescription."

We refer to the case of *Fletcher vs. Fuller*, 120 U. S. 534, as very instructive on the question of presumption of title from long possession and claim, and from acts of ownership extended over a long period, although with occasional interruptions.

> "The open and exclusive use of real property for the purpose to which it is ordinarily fit or adapted, accompanied with a *claim of ownership* by the occupant, constitutes adverse possession, and the erection of a fence or other artificial boundary to indicate the limits of such possession is not essential thereto." (*Zeilin vs. Rogers*, 21 Fed. 103.)

> "So much depends on the situation of the property, the uses to which it can be

applied or to which the owner or claimant may choose to apply it, that it is difficult to lay down any precise rule adapted to all cases." (*Ewing vs. Burnett*, 11 Pet. 41, at page 53.) "But it may with safety be said that where acts of ownership have been done upon land which, from their very nature, indicate a notorious claim of property in it, and are continued for twenty-one years with the knowledge of an adverse claimant, without interruption, or any adverse entry by him for twenty-one years, such acts are evidence of an ouster of a former owner, and an actual adverse possession against him. * * * Neither actual occupation, cultivation nor residence are necessary to constitute actual possession (6 Pet. 513), when the property is so situated as not to admit of any permanent useful improvement, and the continued claim of the party has been evidenced by public acts of ownership, such as he would exercise over property which he claimed in his own right, and would not exercise over property which he did not claim." (*Ib.*, cited by FULLER, Ch. J., in *Simmons Creek Coal Co. vs. Dolan*, 142 U. S. 442, 443.)

"A subjection of the land by the claimant to such uses as it is ordinarily susceptible of, to the exclusion of others, is an adverse possession, and that subjection may appear by its cultivation or occupation for the *ordinary purposes of husbandry or pasturage*." (*Per* FIELD, J., in *Zeilin vs. Rogers*, 21 Fed., *supra*, at page 108.)

It is familiar that the *claim* under which adverse possession is held may be evinced: 1, by the possession itself; 2, by oral declarations (as in *Ewing vs. Burnett*, 11 Pet., page 49), or, 3, by written declarations, or by all these means together. In contemplation of law, the land affected is deemed

segregated and enclosed when claimed under color of title, so as to comprehend in the adverse possession all within the limits described in the colorable writing (*Hunnicutt vs. Peyton*, 102 U. S. 333), and, even if a writing descriptive of the claim may not import "color of title," in the strict sense, it is nevertheless available to characterize possessory uses, so as to show on what assertion of ownership they are enjoyed.

Sedgwick and Wait, Trial of Title, § 765.
Watson vs. Mancill, 76 Ala. 600.
Bell vs. Denson, 56 Ala. 444.
Leeper vs. Baker, 68 Mo. 400.
Clancey vs. Houdlette, 39 Me. 451.
West vs. Lanier, 9 Humph. 762.

III.

The *testimonio por concuerda* is an ancient instrument, part of the *res gestae* of our possession and claim, and very proper to be considered as an important and relevant circumstance. It is evidence suppletory to the fragmentary *testimonio* and aids to reconstruct the latter. It is in *pari materia* with the corresponding original. It is like one letter in a disjointed or mutilated epistolary correspondence. It originated in a high official source, exercising a customary authority in the preservation and protection of evidence, and it has gathered added respectability from the lapse of time. It is accredited as a copy by what is left of the original. It is like a child that bears the ancestral features. The original is the matrix out of which it comes. It has the look of honesty and good faith. It could not have originated in a dream or a conjecture. It must have been made in the presence of the original, since they

both have so much in common. Fraud ought not to be presumed. "From a practical standpoint" (to borrow a term from the opinion), this *testimonio por concuerda* is seen to be possessed of a higher and more impressive character than the record of an ordinary deed in a county clerk's office,—an *ex parte* copy made by an unknown scrivener,—which, under our state statutes, may be read as *prima facie* evidence (*Campbell vs. Laclede Gas Co.*, 119 U. S. 445). And yet, were the records of our Land Office burned by a new General Ross, and the patent registered by a county recorder lost, who would say that, after the lapse of seventy or eighty years, the county record of the patent could not be used to support an adverse possession against the government? Nevertheless, as against the government, such a local record has no original validity whatever.

In *Townsend vs. Downer*, 32 Vt. 184, the Supreme Court of Vermont held that the ancient unauthorized record of a deed gained evidential value by lapse of time, and became admissible as circumstantial evidence to fortify and explain a long continued possession, although originally such record possessed no probative competency; saying (*Ib.*, page 207):

> "The books abound with cases in which deeds and grants have been presumed from possession and attending circumstances, where there has been no proof of the existence or loss of the instruments presumed, except what such possession and circumstances furnish." * * * (*Ib.*, page 208:)
>
> "In *Stevens vs. Griffith*, 3 Vt. 448, the plaintiffs in ejectment claimed under E. Fisk, an original proprietor, by deed from Fisk to Bishop and from Bishop to the plaintiff in 1770. The last deed was not acknowledged, and there was no proof of

the death of the witnesses, or of their handwriting or that of the grantor; but there was a certificate in 1784 to an unauthorized proof of its execution before a justice of the peace, and a record of the deed by the town clerk. The court held that the deed and the certificates were admissible in connection with parol evidence to show that Stevens claimed to own the right of Fisk, attended proprietors' meetings, paid taxes on the right, and that no other person claimed or voted on the right, but there was no evidence that Stevens had had possession of any lands under the right." * * * (*Ib.*, page 213:)

"So Mr. Phillipps, in his Treatise on Evidence, V. I., p. 457, says: 'When possession has gone along with a deed for many years, the original of which is lost or destroyed, an old copy or abstract may be given in evidence though not proved to be true, because in such case it may be impossible to give better evidence.' Such entries of record, when connected with other facts, are admissible, upon the ground that they are themselves acts done at the time and having a necessary or natural connection with other circumstances, all pointing to the execution of the deed. They derive their force, not from their being in any sense legal records, but as acts and declarations made at the time and accompanying the possession."

The chief fallacy in the reasoning of the Land Court is that it deals abstractly and separately with particular circumstantial facts, but fails to consider the synthesis of our proofs. It calls the fagot weak, because it assumes each stick to be weak. It declares gunpowder to have no great explosive quality, because it can find but little in testing each constituent by itself.

It is futile to approach the subject of circumstantial evidence in a complicated case, unless with a mind adapted at once to analytical and complex conceptions.

SECOND POINT.

That our western boundary is the Sierra of Jemez is proved, not only by the express language of the testimonio por concuerda, but also, first, by the fragmentary original itself; and secondly, by uncontradicted testimony.

I.

We believe that the *testimonio por concuerda*, read in connection with the uncontradicted proof of possession, use and claim by the grantee and his heirs, as well as of the consistent declarations of the owners who have lived and died on the land during a period of nearly one hundred and seventy years, together with the immemorial and unchallenged common repute which we have shown without contradiction, must be enough to satisfy the court that Antonio Lucero, by his petition, designated the Sierra de Jemez as the western boundary of the tract which he asked and which, afterwards, the governor granted.

Nevertheless, were we without the official copy and other corroborative proofs, we might easily interpret the fragment of Lucero's petition so as to conclude, to a moral certainty, that the incomplete clause "el poniente con * * * de Xemes" means "the west with *the Sierra* of Xemes" [Jemez].

The figurative context of this petition is found—

1. In the situation and topography of the country described.

2. In the customary natural landmarks mentioned in Spanish grants.

3. In the reasonable probabilities of the case, as to the intent and acts of the parties.

It is plain, assuming the "Mesa de Cochiti" to be, as admitted by the Land Court, "the point of identification of the tract asked for" (Opinion, *Transcript*, fol. 373), that the estate sought was one bounded on the east by a great river flowing northerly and southerly about five or six miles distant from that "point of identification," and on the south by Indian lands presumptively segregated by appropriate landmarks, on the north by a well-known object of antiquity ("el Pueblo Viejo de Cochiti") and on the west by some natural or artificial well-known object associated with the ancient Indian village of Jemez. On inspection of the photograph, it will be readily seen that, from this "point of identification," there is nothing to obstruct the western view except the Sierra de Jemez, which forms the sky line, the intervening country being made up of a great tableland divided into "potreros" by deep cañons. To the same effect is the testimony of the very intelligent engineer, Harris (*Ib.*, fols. 51, 65, 66, pages 28, 39).

It is a notorious fact that (instrumental surveys being unknown in the province of New Mexico) the favorite landmarks designated for royal grants were mountains, rivers and other objects, natural and artificial, of equal importance or prominence.

As said by this court in *United States vs. Sutherland*, 19 How. 363:

> "To those who deal out land by the acre, such monuments as hills, mountains, etc., though fixed, would appear rather as vague and uncertain boundary calls. But, when land had no value, and the unit of

measurement was a league, such monuments were considered to be sufficiently certain."

At the date of our grant (1728), there were no Spaniards settled near to the solicited tract. The only neighbors were the Indians of the pueblos of Cochiti, Santo Domingo and Jemez. It was a wild country, exposed to dangers from the Navajoes and other savages. There was no public reason for restricting the boundaries to an unusual degree, but there was wise policy in putting the tract in the hands of a veteran who might be trusted to uphold the interests of the crown against the lately pacified village Indians and the savages as well. In these circumstances, it cannot be reasonably supposed that the Spanish governor ordered the western boundary to be fixed by any imaginary line, or by artificial monuments alone. Such a course would have been extraordinary. On the contrary, it appears that the western boundary call was some well-known and prominent object pertaining to Jemez or the Jemez country and that that object could be described by the use of two or three words. The original fragment of the petition now in the archives of the government shows that, in the deficient clause "el poniente con * * * de Xemes," the space between the word "con" and the words "de Xemes" is so short that it would be fully occupied by the words "la Sierra," and that no words appropriate to express any more novel or complicated idea could find place there. It is evident, then, that the western call was something *of* JEMEZ ("*de* XEMES"). What was Jemez? It was an ancient Indian village so called. Its inhabitants did not belong to the Queres stock, from which the Cochiti Indians sprang. The Jemez Indians were in no respect affiliated with those of Cochiti. The languages of the two communities

were different. They could not converse together, unless in Spanish. The two villages and the two "nations" were quite distinct (*Ib.*, fols. 67, 68). Each inhabited, cultivated, pastured and hunted over a district of country into which the other did not intrude, unless by favor. The Jemez country, with its fields and mesas, streams and mountains, lay separate and distinct far to the west from the Cochiti country. So the village occupied by the Indians of Jemez was called the "Pueblo de Jemez," the stream that flowed in and about the lands of that village was called the "Rio de Jemez," and its cañon the "Cañon de Jemez," and the mountains adjacent were called the "Sierra de Jemez."

On the other hand, the village occupied by the Indians of Cochiti was called the "Pueblo de Cochiti," the stream that flowed in and about the lands of that village was called the "Rio de Cochiti," and its cañon the "Cañon de Cochiti," and the mountains adjacent were called the "Sierra de Cochiti."

So, when Antonio Lucero suggested as an obvious, unmistakable boundary on the east the Rio del Norte, known to all, he, in the same tendency of thought naturally suggested as an equally obvious and well known boundary on the west the Sierra de Jemez, which was the first conspicuous western object adapted to the purpose—as the limit of a sufficient amplitude of mesa pastures.

It being clear that the western boundary was some object, natural or artificial, pertaining to Jemez —a thing associated in the mind with the idea of "Jemez"—and the physical situation being as we have above described it, we are bound to look among the things of Jemez for some object which can fairly answer the call. It would be unreasonable to look for a thing "of Jemez" in or near the Cochiti

country. The only prominent fixed, visible, tangible things then associated in fact or nomenclature with "Jemez" were the village itself, the Jemez fields, orchards and pastures, the Rio de Jemez, and the valleys and mountains of Jemez. We find in the recital *(supra)* of the petition for the Ojo de Borrego grant that the Borrego Spring is situate on a meridian east of the Sierra de Jemez. Indeed, the accepted names of places pertaining to Jemez, such as "Pueblo de Jemez," "Rio de Jemez," "Cañon de Jemez," "Sierra de Jemez," and "Jemez Peak," all laid down on the published maps, and all well known, suggest that the thing "of" or pertaining to Jemez, which, in 1728, lay first westerly from the mesa de Cochiti was the easterly range of the Jemez mountains which forms the divide between the waters that flow to and along the Jemez country and those which flow to and along the Cochiti country.

The imperfect clause in question is found in the category of boundaries all intended to be understood as prominent familiar things, and the rule *noscitur a sociis* applies.

The same logical process of reasoning which would be applied by an archaeologist in the interpretation of a partially obliterated inscription on an Assyrian tablet or an ancient papyrus or parchment—or by a palaeontologist in reconstructing fossil remains, or by a sculptor in the reformation of a torso, is equally admissible in the interpretation of an ancient, mutilated grant, treaty, or other written instrument, although more data may be necessary in one case than in another for reaching a satisfactory conclusion.

Grant—as said in *Sabariego vs. Maverick*, 124 U. S., at page 295—that this kind of reasoning ought not to be extended to the presumption of a distinct, independent, collateral fact, still it finds due place in

the construction of the fragmentary petition, and that case admits that it has some application in the law of evidence. Mr. Justice MATTHEWS there said *(Ib.)*:

> "There are certain departments of scientific knowledge where an entire series of facts or forms may always be inferred from the existence of any one, according to the maxim *ex pede Hercules*. The conclusion in such cases is deduced from the observed uniformity of physical nature, which, by a necessity of our own minds we believe to be invariable. But this mode of reasoning has but a very limited application in the law of evidence as judicially applied to ascertain the facts and motives of human conduct. It is the foundation of the doctrine of persumptions to the extent to which they are admitted, the limits of which in its application to the circumstances of this case we have already considered. The principal fact in controversy in this case" [whether property had been confiscated by due process of law] "is one of that nature which the policy of the law requires to be proved by direct evidence of a formal character. The absence of that proof cannot be supplied by argument from casual and collateral circumstances."

These views are quite consistent with those which we have above discussed.

Vide 1 Greenl. Ev., Chapters III & IV.

II.

The ambiguity, if any, is latent only, and full elucidation is afforded by the *uncontradicted* evidence of competent declarations and common repute that the western boundary is the Jemez mountains and that the estate had been possessed and used under

that claim from time immemorial. (*Transcript*, fols. 76, 92, 98, 109, 113, 227, 243 and 252.)

Optimus interpres rerum usus. Magister rerum usus. Consuetudo loci est observanda. These maxims, together with their exposition in many cases referred to by Best (1 Ev., § 228), all show the value of usage in the interpretation of writings otherwise obscure.

THIRD POINT.

The adjudication of the alcalde mayor, Antonio de Armenta, made in 1785, is competent evidence.

I.

In discussing the *testimonio por concuerda* in our FIRST POINT, we have had occasion to consider the nature and extent of the functions of the *alcaldes mayores*, as the highest judicial and administrative authorities in their respective "*partidos*" or districts, and to advert to the evidential importance of their certificates and adjudications. The adjudication of Antonio de Armenta, being upwards of *one hundred and ten years old*, has from its great age gained even greater dignity as an ancient instrument than the *testimonio* of 1817. An ancient adjudication of a court of general jurisdiction, this important muniment of our title stands accredited with an impressive solemnity and authority not to be impaired by the *ipse dixit* or perfunctory ruling of an inferior tribunal of limited jurisdiction created by statute in 1891.

Vide Freeman vs. Phillipps, 4 M. & S. 486, 495.

When the alcalde mayor acted judicially in 1785, he exercised the ancient powers of his office unrestricted by such regulations (Escriche, "*Alcalde mayor*") as were formulated in the royal cedula of

the fifteenth of May, 1788, and of course he was not embarrassed by such questions as might arise under the constitution of 1812, the abrogation of 1814 and the restoration of 1820.

Having examined the subject sufficiently to feel the need of modesty in suggesting the extent of this judicial jurisdiction as early as 1785, we are comforted by the reflection that Mr. Chief Justice MARSHALL (*Soulard vs. United States*, 4 Pet. 511), and Mr. Justice GRIER (*United States vs. Peralta*, 19 How. 343) were humble enough to admit the inadequacy of their knowledge of the obscure subject of Spanish laws, customs and usages relative to official jurisdiction, and, in the consideration and discharge of treaty obligations, preferred to credit high Spanish officials with good faith in the exercise of political, judicial and administrative powers, and to attribute to them a reasonable knowledge of the laws which they had undertaken to administer and of the limits of the jurisdiction which they respectively had assumed. (*Vide Elmendorf vs. Taylor*, 10 Wh. 152; *Arredondo case*, 6 Pet., pages 724 to 728.)

Some of us at the bar, and possibly others on the bench, had reasonably hoped that years of constant study and application in the discharge of the high duties of their position would enable the honorable justices of the Land Court to formulate a series of opinions that would irradiate the obscurity in which we are all groping, and at the same time illustrate their own careers. However, in the circumstances that attend us, we can only suggest that an alcalde mayor of a "*partido*" in the province of New Mexico exercised full "ordinary" jurisdiction, in the year 1785, and that (as we understand it) was a general jurisdiction of all causes, except such as were expressly assigned by the royal will to other

tribunals specially designated. (Escriche, "*Juez Ordinario*," "*Alcalde mayor*.")

We are sure that we never contended that an alcalde mayor or any other authority, whether higher or lower, could without express permission entertain a suit "against the crown," for it is rudimentary that in all countries the sovereign cannot be impleaded by a subject *in adversum*, although great lapse of time might well justify the presumption that even "proceedings against the crown" had been authorized or ratified. But it seemed to us, as it still seems, that, notwithstanding the principle just mentioned, a sovereign grant of land conferred on a subject, is good evidence to protect the title and possession so conferred, whether such evidence be proffered before a Solomon or a Dogberry—the High Court of Chancery or a County court.

Now, all that the alcalde mayor, Armenta, undertook to do was in the name of the king, for the honor of the king, to declare and enforce the king's own grant against a bastard pretense of right set up by a trespasser who had invaded an estate consecrated by the king to the private use of Antonio Lucero and his heirs.

Moreover, before the alcalde mayor passed his decree, he called the governor—the king's *alter ego*—into consultation, and, reciting this fact and the governor's opinion and concurrence, he proceeded all the more confidently to eject the king's own lieutenant of cavalry—a proceeding that would have amounted to *lese majesty* and cost the alcalde his life had he acted fraudulently or without jurisdiction. Such an adjudication is, especially after the lapse of one hundred and ten years and upwards, quite respectable evidence of the extancy of the grant with the governor's knowledge and sanction and of

its subject matter (*Gonzales vs. Ross*, 120 U. S., at page 623; *Hanrick vs. Jackson*, 55 Texas, at page 27), and it has become a muniment of title too strong to admit of successful assault to-day.

In the case of the Cubero grant, this court treated with becoming respect the adjudication of a Mexican "judge commissioner" made as late as 1841; reading that, with the other poooofs of possession and claim, and saying (*United vs. Chaves*, 159 U. S., at page 461):

> "The record likewise contains translations of documents found in the archives of Valencia county, pertaining to a dispute between the town of Cubero and the pueblo of Laguna as to boundaries. These papers were dated in 1835, 1840 and 1841, and disclose a statement of the dispute, certified to by José Francisco Chaves of [y?] Baca, judge commissioner in the second district of the department of New Mexico. In this certificate the lands within Cubero are stated to have been purchased from Francisco Baca, the Navajo."

In the Cubero case, this adjudication of 1841, with oral testimony as to a grant that had been lost, and as to boundaries, claim and possession, and dealings with parcels of the tract in question, together (*Ib.*, page 462) with "a number of original deeds * * * variously dated from 1841 to 1850, showing sales of parcels of this land," etc., was part of the evidence respecting which the court said (*Ib.*, page 463):

> "In view of this large body of uncontradicted evidence, we think that the court below was plainly right in finding that the claimants had satisfactorily sustained the allegations of their petition."

Freeman vs. Phillipps, 4 *Maule & Selwyn*, 486, 495, *supra*, is a precedent showing the presumptions attached to the proceedings in an ancient suit.

1 Greenl. Ev., §§ 19, 20.

II.

Since the Cañada de en Medio, which was the subject of this adjudication in 1785, lies wholly outside and north of the northern boundary fixed by the decree of the Land Court—the pastures extending down from the peak Picacho, and being quite luxuriant, except in the lower part of the cañada (*Transcript*, fol. 50), this adjudication exposes the fallacy of the Land Court's opinion, and by exhibiting that cañada as a part of our grant, indicates to us quite plainly, as we follow the course of that cañada towards the "Picacho," the validity of our contention and proofs that our northern boundary is indeed the Old Pueblo on the Potrero de las Vacas.

Besides, this right of occupation, thus sanctioned in 1785, was always afterwards maintained, and the heirs of Lucero have continued to enjoy the pastures of that cañada under their ancestor's title for upwards of a century since. (*Ib.*, fol. 77, page 48.)

III.

This ancient adjudication, with its recitals, imports a full confirmation of the original grant, which of course must be read *in pari materia*, and operates also as a "just title" upon which a beneficial presumption arose and an impregnable prescription was founded. The recitals are more solemn and cogent than those of an ancient private deed. The Supreme Court of Massachusetts merely reiterated an old doctrine when it said (in *Sparhawk vs. Bullard*, 1 Mete. 95, 101):

> "Recitals in ancient deeds are always competent evidence and are presumed to be true, unless the contrary can be made to appear."

It follows that this ancient adjudication must today carry full faith and credit as a shield of our title; it being always borne in mind that the great doctrine of presumption, which comes to the aid of claims actually enjoyed by long possession under ancient muniments, however imperfect, is always invoked in favor of peace, and is not sanctioned as an aggressive weapon drawn by long lurking avarice against the homes and families of the peaceful and confiding.

Hence, against the present effort to destroy our ancient landmarks and drive us from our hearths and pastures, we invoke in this high tribunal and before its impartial ministers the impressive injunction of the Spanish judge, by which, vouching (*Ib.*, fol. 174) "the authority on" him "conferred," he declared that the decree which he had signed was delivered to Lucero's heirs "so that before any tribunal or judge it shall be presented they may be heard in justice with the right which since their grandfathers and fathers they acquired by royal grant."

FOURTH POINT.

The northern boundary of the grant is the Pueblo Viejo on the Potrero de las Vacas.

A. At the close of the Indian rebellion, the Spanish governor, in a spirit of magnanimity, made large grants of land to the subjugated Indians. It was natural to show equal magnanimity, as well as a grateful generosity, to the old soldiers who had contributed by their services in battle to the success of the Spanish arms. Among these veterans was

Antonio Lucero, the grantee of the grant in question. (*Transcript*, fols. 128, 181.) When he asked for agricultural lands "at the mesa to which the Indians who had rebelled retreated," he referred to a geographical point well known to every soldier who had been engaged in the recent war, and especially to the governor; and when he asked for pasture lands incidental to a home ranch to be established in the vicinity of that mesa, he naturally asked for lands radiating and extending therefrom in all directions and sufficient in area to meet all the future needs of himself and his growing family and the colonists who might join him. However old may appear to-day the ruins of the village established by the Indians on that mesa at the time that they sought it as a refuge from the Spanish soldiery one hundred and sixty-eight years ago, it was at that day an establishment comparatively new. Prof. Bandelier very properly criticises the modern designation "the old pueblo of Cochiti," as now applied to these ruins, since, in fact, they are ruins of the latest pueblo ever erected by the Cochiti Indians, the same having been built in the last decade of the seventeenth century after they had "retreated" to the "potrero" or "mesa" on which its burned remains are now situate. When the pueblo was captured by the Spaniards, after the Indian retreat, much corn was found there, which, after it had been shelled by the Indians, under the compulsion of their conquerors, was removed to Santa Fé, the cobs being left behind. Afterwards, the pueblo was burned by the Spaniards and some of the charred corn-cobs can be seen there to-day. In all the Spanish chronicles relating to this war, in the course of which the Indians "retreated" to the mesa in question, that place is referred to as the "mesa" or "the Potrero Viejo" (*old mesa*), and never as "the old pueblo." It is only in recent

times that the term "old pueblo of Cochiti" has been applied to that mesa or "potrero." For instance, the old chronicles state that DeVargas retired from the "mesa" to "Cochiti el Viejo" on the Rio Grande. That pueblo they had occupied in the earliest days of Spanish sway in New Mexico, and there, indeed, they are established to this day. They also refer repeatedly to the assaults on the "mesa." Prof. Bandelier, always discountenancing the modern appellation "the old pueblo of Cochiti," invariably refers to the locality as the "mesa" or the "Potrero Viejo." Indeed, it is absurd to suppose that an old Spanish soldier, recently participant in the war of subjugation against the insurgent Pueblo Indians, and who well knew that the retreat of the Indians on the mesa was a new village which the Spaniards had captured and burned about thirty years before, would have referred to that ruined village as an object of antiquity, even if we assume that that mesa or potrero had in early ages been occupied by unknown people whose dwellings had afterwards crumbled into "mounds." This appears the more absurd when we consider that all that district of country was then filled with ruins, many of which were even prehistoric in origin. It is equally absurd to suppose that Antonio Lucero, establishing himself at the "mesa," as the central point of the large estate to which he sought a title, and from which he contemplated the Rio Grande as his eastern boundary and the Sierra de Jemez as his western boundary, should have been content to ask, as his northern boundary (at a time when to ask was to receive), the very "mesa" at which he expected to establish his home,—an absurdity which would involve the loss of a considerable part of the agricultural lands immediately in his view, and leave him with a grant of anomalous shape,—a tract fourteen

miles long and only one mile and a quarter wide, and consisting for the most part of the inaccesible ends of high potreros. It is equally absurd to suppose that Antonio Lucero, who, like the Spanish chroniclers, regarded the place "to which the Indians retreated" as a "mesa," and well knew that the recently burned pueblo was the last built pueblo, and possessed no antiquity, should have called it, in a subsequent part of his petition, "the old pueblo of Cochiti." It is even still more absurd to suppose that he should have adopted the mesa itself, which was situate more westerly than northerly from his point of view, as his northern boundary. On the other hand, it is quite natural that the wonderful prehistoric ruin, so conspicuous in Cochiti traditions, and so much venerated by that people, and so well known to everybody, which lay in a direction northerly from his point of view and at a sufficient distance to give a reasonable amplitude to the grant in his contemplation, should have been selected as a most appropriate boundary call on the north.

1. The adjudication of 1785 is utterly inconsistent with the new pretension that the "mesa" is on the northern line, for that adjudication confirms in the heirs of Lucero the whole of the Cañada de en Medio, and no part of that cañada lies south of the arbitrary line which the government now suggests in aid of lawless intruders.

2. The testimony of the surveyor, William Harris, shows the antiquity and striking appearance of the true "Pueblo Viejo," and both the Indian witness John Dixon and Prof. Bandelier show that that ruin is held in great veneration by the Cochiti Indians, as being the ruin of one of their ancient homes. Prof. Bandelier also shows that this ruin is cherished by the Cochiti Indians with such superstition that they worship there to-day their old stone

idols, and would resent with violence any desecration of the place.

3. All the witnesses that have located this boundary call, such as the witnesses John Dixon, Felipe Sandoval, Zenon Sandoval, Manuel Hurtado, Roman Baca and Pablo Lucero (*Ib.*, fols. 68, 76, 92, 98, 116, 127), concur in proving that this old pueblo has always been recognized by themselves and by the old people now dead, and by all the traditions of that community, as being the old pueblo mentioned in the grant. Besides, the witness Mariano Salas, born in 1808, testified in 1882 that possession under the grant was held up to El Rito de los Frijoles on the north. (*Ib.*, fol. 227.) Against this testimony not one word of proof has been adduced by the government, and it remains in the case absolutely uncontradicted.

4. All the witnesses on the subject concur in proving the practical location of the grant with this venerable ruin as its northern boundary, and the occupancy and use of the whole area by the grant claimants for many generations. The temporary intrusion on the "Capulin," if it occurred within the grant, was only an intrusion *pro tanto* and was manifestly illegal; but the witness Hurtado (*Ib.*, fol. 87) shows that this intrusion took place north of the grant, and he was not contradicted. Indeed, no evidence was adduced against our proof of practical location and continued use and occupation, and it remains in the case absolutely uncontradicted.

5. Even if there were any doubt or ambiguity about the location of our northern boundary call (and there is no doubt or ambiguity), this uncontradicted evidence of practical location and continued use, occupation and claim would be absolutely conclusive.

Rhode Island vs. Massachusetts, 4 How., at page 639.

Gerard's Titles, 494, 495, and cases cited.

In Conn vs. Penn, Pet. C. C. 496, the court said (*Ib.*, page 510), with reference to reputation of boundary:

> "This reputation must have originated in some act of public notoriety, or it would have sunk into oblivion,"—and, again (*Ib.*, page 511): "No gentleman of the profession, who is at all conversant with land trials, can be ignorant that the courses and distances laid down in a survey, especially if it be ancient, are never in practice considered as conclusive, but that, on the contrary, they are liable to be materially changed by oral proof, or other evidence, tending to prove that the documentary lines are those not actually run. How often have we known reputed boundaries, proved by the testimony of aged witnesses, and even by the hearsay evidence of such witnesses, established in opposition to the most precise calls of an ancient patent."

Lovejoy vs. Lovett, 124 Mass. 270.

Beard's Lessee vs. Talbot, Cooke (Tenn.), 142.

In *Ellicott vs. Pearl*, 10 Pet. 412, the declaration of a deceased surveyor was rejected only for the precise reason (*Ib.*, page 438) that "it was evidence not to general reputation as to boundary, but to particular facts and circumstances attendant upon the original making of Remey's survey." Nevertheless, particular facts, when they amount to acts of ownership and claim by a party in interest, and even the declarations of a possessor and claimant

(since deceased) made when indicating his boundaries, etc., may be shown, as was held in *Hunnicutt vs. Peyton*, 102 U. S. 333, 362. Thus the evidence of the witness Roman A. Baca, as to the declarations and acts of his deceased father-in-law made and done at the old pueblo of Cochiti, while showing that ruin, the juniper tree and the embedded stone cross, as monuments of the northern boundary (*Transcript*, fol. 92), comes within the restrictions of the rule. *Vide* also *Clement vs. Packer*, 125 U. S. 309; *Ayers vs. Watson*, 137 U. S. 584, 592 (citing with approval the opinion, *supra*, of Mr. Justice FIELD in *Morton vs. Folger*, 15 Cal. 275, 279, 282), and *United States vs. Chaves*, 159 U. S. 452.

Particular significance attaches, as we have shown in our opening statement *(supra)*, to the phraseology of our numerous ancient instruments of conveyance reciting our royal grant, and especially Exhibit No. 18 (*Transcript*, fol. 301) by which, in the year 1823, a parcel of land in the Cañada of Cochiti above and adjoining the *Arroyo de las Piedras* (*Ib.*, fol. 301, page 194), was conveyed under the grant title. The arroyo so mentioned is situate, as we have proved *without contradiction* (*Ib.*, fol. 129, page 88), one-half a mile north of the narrows ("cañoncito"—"Salto de Agua") of the cañada, and consequently at least a mile north of the arbitrary north boundary of which we complain. (*Vide* Harris map.)

This parcel of land is also on a meridian west of the imaginary western boundary fixed by the decree of confirmation. *(Ib.)* Besides, we gave abundant, uncontradicted proofs of the occupation under our title, in old days, of ranches above the cañoncito and "Salto de Agua."

FIFTH POINT.

The opinion is fallacious in its adoption of a mere theory regarding the locality of the old pueblo of Cochiti, in opposition to the overwhelming and uncontradicted evidence, and in open disregard of the ancient muniments of our title.

A. We discuss elsewhere the competency and conclusive effect of the evidence by which, in contradiction of this theory, our northern boundary is proved to be the old pueblo on the Potrero de las Vacas; but the opinion is interesting because it is perhaps the only opinion in the books wherein the accumulated testimony of many generations, corroborated by authentic ancient writings, has been brushed aside, although in no material respect contradicted, by a judicial conjecture of matter of fact.

Out of the very numerous Lucero family, the large communities of Indians of Cochiti, Santo Domingo, San Felipe, Zia, Jemez, Laguna, Acoma, San Ildefonso, Santa Clara and other pueblos (all *quasi*-wards, dependents and beneficiaries of the government), and the populous Mexican towns and settlements adjacent to our estate, the government did not call to the stand a single witness to contradict our proofs of possession, claim and general reputation of boundaries.

Every presumption is, therefore, in favor of our great and consistent body of uncontradicted testimony, and every presumption is against the government; and the acquiescent individual defendants are in the same predicament. (*Graves vs. United States*, 150 U. S. at page 242; *Runkle vs. Burnham*, 153 U. S. 216.)

Therefore, since we had made out our case by uncontradicted proof, we were entitled to a decree

conformably; just as, at law, we would have been entitled to judgment upon a special finding of the facts proved, or upon a demurrer to evidence.

Ewing vs. Burnet, 11 Pet., at page 53.
Morton vs. Folger, 15 Cal., at page 284.
United States vs. Chaves, 159 U. S. 452.

Mr. Bandelier's archæological report, introduced by the government, with our consent (*Transcript*, fol. 139, page 96; fol. 144, page 99), only helped our case, by showing (in one of his notes) that we have a grant, and by further showing that the mesa "to which the rebellious Indians retreated" and on which they established a new pueblo was called (as appears by the text and the Spanish extracts from the old chronicles found in the notes) the "Mesa de Cochiti" or the "Potrero Viejo" (old potrero or old mesa), that the pueblo there built by the Indians was their last pueblo; that to call the ruin "the Old Pueblo" is misleading; that the oldest pueblo of Cochiti inhabited in historical times is the pueblo where the Cochiti Indians now reside on the Rio Grande; that the tract in controversy is composed generally of a tableland cut up into potreros by arroyos, etc., and that the Pueblo Viejo which we claim as our northern boundary call is a most remarkable prehistoric ruin, generally known by sight and by tradition, and so much venerated by the Indians of Cochiti that it is by them considered a sacred thing, attended by demons and clouded in an atmosphere of uncanny charm.

We regret that we have been unable to make more specific reference to this report. We had naturally assumed that copies of the book could be easily procured in Boston for the use of the members

of the court, but telegraphic inquiry has brought us word (at Denver) that the work is out of print. Nor have we been able to find a copy, either in the Denver libraries or in private hands. The copy in the possession of the court—forwarded with the transcript (*Ib.*, fol. 385)—was furnished to the government by Mr. Tipton, and we have been compelled to rely on our memory of the subject in preparing this brief.

However, this work, so far as it is based on hearsay gathered during the author's sojourn in the pueblo of Cochiti, can hardly be deemed competent evidence, since the government had it within its power to produce as sworn witnesses the living sources of such information.

Vide Morris vs. Harmer, 7 Pet. 554, 558; *State vs. Wagner*, 61 Me., at pages 188, 189; 1 Wharton Ev., § § 338, 664, also § 282.

In *Whiton vs. Ins. Co.*, 109 Mass. 24, the court held that "a book [Appleton's Cyclopaedia] published in this country by a private person, is not competent evidence of facts stated therein of recent occurrence, and which might be proved by living witnesses, or other better evidence; and the book in question, not being shown to have been approved by any public authority, or to be in general use among merchants or underwriters, had no tendency to show that the island of Navassa was commonly called and known as a guano island." (*Per* GRAY, J., *Ib.*, page 31.)

By its action in reading this book as evidence, the government concedes the validity of hearsay in respect of ancient uses, declarations and boundaries.

B. The writer of the opinion, in slighting counsel, says (*Transcript*, fol. 374):

> "When Lucero made his petition for this grant he seems to have stood in the flats of Albuquerque, and not upon the heights of the Cochiti mesa, overlooking the distant Pueblo Viejo, as counsel for plaintiffs supposes."

The only foundation for this conjecture regarding the whereabouts of Antonio Lucero at the time is the fact that in his petition, *as it appears in the official copy*, made by the alcalde mayor, Baca (*Ib.*, fols. 158, 167), which the Land Court rejected (except for sarcastic use), the petitioner described himself as "Vecino de la villa de Alburqqe" (an inhabitant of the town of "Alburquerque,"—the old and correct spelling), but the petition does not purport to give the place in which it was written. The fragment of the original (*Ib.*, fol. 156) shows only the letters "*querque*," of all this clause, and it was out of this half of a foot that the opinion constructed Hercules.

It was one of the counsel for Mr. Lowthian who sat in the court room, an enemy to our title (*Ib.*, fol. 152), that in his argument contended that Lucero asked for a piece of land *on* the mesa, giving to the Spanish preposition "en" its primary signification of "in" or "on." [That word, "en," is derived from the Latin "in," just as the French prefix "en," found in so many English words of French derivation.]

All we contended on this point below is what we contend here, namely, that, assuming that Lucero had investigated the situation, extent and merits of the coveted estate before he applied for his grant, he must have formed a mental image of what he wanted, and, taking the mesa itself—the historical "heights" where the tragedy had occurred—as a *point de vue*

or *point d'appui*, or, in the language of the opinion (*Ib.*, fol. 373), "*the point of identification of the tract asked for*," he must very naturally have viewed his proposed acquisition just as we view it to-day, or as we picture it to the court by the photograph, the Harris map and the descriptive oral testimony. Then, putting the petitioner *on (en)* the "heights of the Cochiti mesa," as the private counsel would have it, or as we may reasonably suppose his figurative situation to have been when he selected and described the boundaries from "the point of identification of the tract asked for," we may well infer that, as he regarded the stream flowing by the base of those "heights," his mental conception of the general direction of that stream from his point of view was precisely like the mental conception of the author of the opinion when, in describing the mesa of Cochiti as "the point of identification of the tract asked for" (*Ib.*, fol. 373), he wrote: "Here, then, is a mesa which has a well understood name, which it has derived from the association of some fact or circumstance. *Its north side* forms the wall of a cañon, through which flows a stream, both bearing the same name of Cochiti." Surely the humble soldier Lucero, who had never seen a theodolite, or learned the true north, or east, or south, or west, or crossed the *pons asinorum*, might, perchance, in like manner have looked from the burned corncobs among which he stood to that same "north side" and carried his thought, if not his eyes, to the Pueblo Viejo de Cochiti, on the Potrero de las Vacas, as a fitting terminal point of this line of northern direction, so assumed by him in 1728 and by the Land Court in 1894.

Indeed, as we have already mentioned, the very decree of confirmation, still pursuing this false idea of the north, describes this mesa, these "heights,"

which are "the point of identification," as "the mesa of Cochiti *on the south side* of the Cañada of Cochiti" (*Ib.*, fol. 378, page 249). The witchery from the enchanted Old Pueblo, which induced this "magnetic variation," also gave a Martian "thrill of the north" to the learned and brilliant counsel for the government, who in his examination of witnesses frequently referred to the mesa in question as lying south of the Rio de Cochiti (*Ib.*, fols. 58, 95, 117, 148), and to the witnesses—even the engineer Harris (*Ib.*, fols. 58, 95), and to the counsel for the claimants (*Ib.*, fol. 148). Moreover, the same mental conception of the relation of the mesa de Cochiti to the Rio de Cochiti and the northern call of the grant was manifested scores of times during the last century and a half by the parties to the numerous conveyances, ancient and modern, exhibited in our case (Statement, *supra*), in their frequent description of parcels in the cañada as bounded on the north or the south by the "Rio de Cochiti."

It seems, from the testimony of Mr. Tipton (*Ib.*, fols. 141, 145), and that of Mr. Hughes (*Ib.*, fol. 149, page 103), that the oldest ruins on the mesa de Cochiti are situated near to the point of that mesa; so that, to one actually or by imagination standing on that "point of identification," the oldest ruins would probably be to the south or southeast of his position, just as they would be west of the agricultural lands.

Manifestly, the mesa de Cochiti was regarded by the petitioner and the governor alike as the interior monument of the grant, and all the boundary calls as exterior to that mesa. It was an historic battle-ground. The dismantled ruins there were only a part of this monument. That was a permanent natural object thoroughly identified, while they were perishable. There had been no Spanish community in the neighborhood to give a specific name as yet to those

comparatively recent ruins. The potrero on which they are situate might well be called the old potrero "el Potrero Viejo" [NOTE.—*Not* "*Pueblo* Viejo"], among the Indians, for doubtless there were traditions of its ancient uses, but, in a land of crumbled adobe and stone ruins, there was at that time no reason to give to the mere remains on this mesa a name suggestive of a remote antiquity.

In the Indian mind, the conspicuous and extraordinary object of antiquity among all the ruins was the Pueblo Viejo identified by our witnesses. Thus the young Indian witness always called the latter the Pueblo *Viejo*, and, while at times confused, like Indian witnesses in general, he made it clear that the single idea of antiquity was attached only to the Pueblo Viejo on the potrero to the northeast, while the ruins on the mesa adjoining the Cañada de Cochiti were called "all different ways" (*Ib.*, fol. 72), even ("*now*") the "old pueblo of Cochiti," although "the right name of that" [the ruin on the Potrero de las Vacas] "is Pueblo Viejo, and this" [the ruins adjoining the cañada] "is Pueblo de Cochiti" [without the adjective "Viejo"]. This wonderful object and its traditions could not have escaped the notice of the early Spaniards.

It was natural, after the Luceros had long settled the place, and the ruins on the mesa hard by had grown older and older, to refer to them occasionally as the "old pueblo," but it was more common to refer to the site as "El Potrero de las Casas," or "El Potrero Viejo."

Lucero, in his petition, referred to the "Old Pueblo of Cochiti" as a distant object already ancient, and not as part of the mesa itself. To the Cochiti Indians, the old home of their prehistoric ancestors was simply "el Pueblo Viejo." The Spanish mind must naturally have suggested the addition "de

Cochiti." The ruins being scattered along the mesa of Cochiti even to its point (*Ib.*, fol. 149), it would have been absurd to refer to them as a north call (thus excluding some of the best agricultural land) rather than, for instance, to refer to the high cliff which bounds the mesa on the northwest, had the petitioner really intended not to ask for land to the north of the mesa or of any object there situate.

Then the opinion theorizes (*Ib.*, fols. 374, 375), somewhat metaphysically, that the petitioner and the governor could not "disassociate" the ruined pueblo from the mesa, the cañon and the stream, and "associate" them with the distant Pueblo Viejo, etc. Of course, when the mesa was selected as "the point of identification of the tract" it was accepted as an integral thing of "prominence and distinction," and it was seen iridescent in the hovering cloud of a bloody massacre, but it was only the hub of the wheel then in Lucero's head; for his thoughts reached to the Rio del Norte, the Pueblo Viejo, and the Jemez mountains. The reasoning of the opinion, if sound, might also suggest that by "Rio del Norte" the petitioner meant the north fork of the Rio de Cochiti, because that fork is called "Rio del Norte" (*Ib.*, fol. 114), and it is even one of the "associated" facts.

The supercilious treatment of our ancient muniments, our possession and claim of eight score years and upwards, our uncontested acts of ownership for generations and of the general reputation concerning our boundaries, etc., is best rebuked by the wise ruling of this court on like subjects in the case of *United States vs. Chaves*, 159 U. S. 452, and by these impressive words (*Ib.*, page 463):

> "In view of this large body of uncontradicted evidence, we think that the court below was plainly right in finding that the

claimants had satisfactorily sustained the allegations of their petition. Not only was there evidence of the existence of an original grant by the government of New Mexico, and of the loss of original records sufficient to justify the introduction of secondary evidence, but there is the weighty fact that for nearly sixty years the claimants and their ancestors have been in the undisturbed possession and enjoyment of this tract of land." Again (*Ib.*, page 464): "Finally, the rule of the law of nations that private property in territory ceded by one nation to another, when held by a title vested before the act of cession, should be respected; the express provision to that effect contained in the treaty between Mexico and the United States; the evidence of the fact of a grant, legal under the forms of Mexican law, and of a juridical possession given thereunder, and the strong presumption growing out of an exclusive and uninterrupted possession and enjoyment of more than half a century, bring us to concur in the decree of the court below."

SIXTH POINT.

All of our ancient instruments exhibited on the trial are weighty links in the chain of circumstances presented, and are to be construed in pari materia each with the other, and all with the oral testimony.

1. They are all admissible *per se*, because of their antiquity, their production from the custody of the heirs of the grantee, their apparent genuineness and good faith, and the possession which corroborates them. *Applegate vs. Lexington, etc., Co.*, 117 U. S. 255, and cases cited; *Fulkerson vs. Holmes*,

117 U. S. 389; *United States vs. Chaves*, 159 U. S. 452.

"When a deed or will, or other attested document, is thirty years old or upward, and is produced from the proper archives or other unsuspected depositary, then such document proves itself, and the testimony of the subscribing witness is not necessary, though he may be called by the contesting party to dispute genuineness. The same rule applies in the Roman law. *Burling vs. Patterson*, 9 C. & P. 570; *Talbot vs. Hudson*, 7 Taunt. 251."

2 Whart. Ev., § 1359.

"Long possession cannot be proved by living witnesses; and, to prove it, it is necessary to have recourse to ancient documents relating to such possession. Such documents, however, must be thirty years old, and must be traced to the proper archives or depositaries. It is enough in such case, to entitle a document to be admitted in evidence, to show that it bears on its face marks of having been executed at least thirty years since, and that it comes from the custodians who would have possessed it if it were genuine. Best Ev., § 499; *Malcomson vs. O'Dea*, 10 H. of L. Cas. 614; *Bishop of Meath vs. Winchester*, 3 Bing. N. C. 200; *Croughton vs. Blake*, 12 M. & W. 205; *Barr vs. Gratz*, 4 Wheat. 213; *Winn vs. Patterson*, 9 Pet. 675; *United States vs. Castro*, 24 How. 346."

1 Whart. Ev., § 194.

"It is a rule that, if an instrument is thirty years old, it may be admitted in evidence without any proof of its execution; such instrument is said to prove itself. This

rule appears to be founded on the general experience of the inconvenience and inutility of searches after attesting witnesses to ancient deeds, and on the expediency of fixing some definite limit to searches of this nature." 2 Ph. Ev. (star), page 475; also note 430 (star), page 478: "In *Jackson ex dem. Lewis vs. Laroway* (3 Johns. Cas. 283), the point was fairly and fully considered, and Radcliff, J., who delivered the prevailing opinion, laid down the general rule to be, 'That a deed appearing to be of the age of thirty years may be given in evidence without proof of its execution, if the possession be shown to have accompanied it; or, where no possession has accompanied it, if such account be given of the deed as may be reasonably expected under all the circumstances of the case and as will afford the presumption that it is genuine. This rule,' he adds, 'is founded on the necessity of admitting other proof, as a substitute for the production of witnesses, who cannot be supposed any longer to exist. A correspondent possession is always high evidence in support of such a deed, but where no such possession appears, other circumstances are admitted to account for it and raise a legal presumption in its favor.' This case * * * has been both recognized and acted upon by the Supreme Court of the United States. *Barr vs. Gratz*, 4 Wheat. 213; *Winn vs. Patterson*, 9 Pet. 674, 675, per STORY, J. * * * Much stress is always placed upon the circumstance of the instrument having been found in the custody of those who had an interest in the subject matter to which it purports to relate. In accounting for it, this should always be looked to, and if it has been preserved by them with care, we are entitled to infer their opinion to have been in favor of its genuineness. In the case of ancient deeds of conveyance, for example, we should

> expect to find them, if genuine, in the possession of some one claiming under the grantee, and preserved among the muniments of title. When so found, the fact is favorable to their authenticity and reality as deeds."

And a subsequent grantee may produce such instruments.

Williams vs. Conger, 125 U. S. 397.

2. Their recitals are competent evidence.

Fulkerson vs. Holmes, 117 U. S. 389.
Williams vs. Conger, 125 U. S. 397.
Hatheway vs. Evans, 113 Mass. 264.
2 Whart. Ev., § 941.
1 Greenl. Ev., § 19, etc.

3. The adjudications by the alcalde mayor, Armenta, in 1785, and the alcalde mayor, Baca, in 1817, as well as the old *testimonio*, are admissible and competent under the same rule.

United States vs. Heirs of Delespine, 15 Pet. 226.

> "The record of a former case is admissible in evidence against persons not parties or privies, to prove the collateral fact of the antiquity of original deeds therein contained and to account for their custody." WOODS, J., in *Applegate vs. Lexington, etc., Co.*, 117 U. S. 255.
>
> "Where proceedings in an ancient suit are produced as evidence of reputation upon matters of public or general interest, it may generally be presumed that the parties to the suit and the witnesses were actually in the respective capacities which they purport

to have been, without proving this by evidence *de hors* the proceedings themselves. Thus, in *Freeman vs. Phillipps*, 4 M. & S. 495, an action by a copy holder against the lord of a manor, in which the defendant gave in evidence the proceedings in a suit in equity in the time of King William III., brought by a copyholder of the same manor against the then lord, it was held that no evidence aliunde was requisite to make the proceedings admissible. BAYLEY, J., said: 'We must assume at this time of day, that the bill was not a mere fabrication, but was really filed by such a copy holder against the lord, and that the trial was had, and the depositions made between such parties as were really litigating their rights in the characters claimed and disclosed on the record.'" 1 Ph. Ev. (star), p. 243.

"In general, judgments and decrees are evidence only in suits between parties and privies. But the doctrine is wholly inapplicable to a case where the decree is not introduced as *per se* binding upon any rights of the other party, but as an introductory fact to a link in the chain of the plaintiff's title, and constituting a part of the muniments of his estate." Per STORY, J., in *Barr vs. Gratz*, 4 Wheat. 220.

1 Greenl. Ev., §§ 19, 139, 144.

4. These ancient instruments are competent to show the character of the claim of the possessors of the land—both such as constitute "color of title" and such as may lack color.

Pillow vs. Roberts, 13 How. 472, 477.

Humbert vs. Trinity Church, 24 Wend., page 604.

Sedgwick & Wait, page 666.

5. They are still competent even so far as they may be founded on customary law only.

Shearer vs. Fowler, 7 Mass. 19.

6. They are all within the well-settled doctrine discussed by Phillipps and Wharton, viz:

1 Ph., Ev., page 229:

> "It has been seen that hearsay evidence, in matters of private interest, not affecting any public or general interest, is inadmissible, especially where the matters do not involve any prescriptive right. But the admissibility of ancient documents, purporting to constitute a part of transactions themselves (as being acts of ownership or an exercise of right), stands upon a different principle. Such documents are often the only attainable evidence of ancient acts of possession, which may be of great weight in the investigation of titles, and they naturally accompany and constitute a part of such acts. Ancient documents, therefore, purporting to be part of a transaction, and not a mere narrative of them, are, under certain qualifications which will be noticed, receivable as evidence that those transactions really occurred. And, in this sense, the documents may be called hearsay evidence of ancient possession. Such evidence is very commonly adduced in practice to corroborate modern use or possession. Thus, upon a question as to the right of a lord of a manor to hold certain land within the manor free from common, several counterparts of leases found among the muniments of the lord of the manor, from which it appeared that the land had been demised by the lord free from common, were held to be receivable in evidence. Clarkson vs. Woodhouse, 5 T. R. 413, n.; S. C., 3 Doug. 189. In an action

of trespass (Rogers vs. Allen, 1 Camp. 309) upon issue joined on a plea of justification by virtue of a prescriptive right of fishery appurtenant to a manor, old licenses on the court rolls, and leases granted by the lords of the manor, in consideration of certain rents, to fish in the *locus in quo*, were held to be receivable in evidence."

Also 1 Wharton, Ev., § 199:

"Must it be proved, in order to admit such documents, that acts (*e. g.*, taking of possession) were coincidently done under them? So it has been zealously maintained; but to require such preliminary proof is to deny the admissibility of the evidence to which such proof is preliminary. Ancient documents are admitted, if taken from the proper depository, on the assumption that living memory does not go back to the period to which the ancient document relates. If, however, living memory does go back to the period to which the document relates so far as to be able to prove coincident possession, then the reason for the admission of the document fails; or if to prove coincident possession, a second ancient document is adduced, the case is in no way helped; since, to sustain the second ancient document, coincident possession would still have to be proved. Hence, it has been properly ruled, that the absence of proof of coincident possession goes not to the admissibility but to weight. *Malcomson vs. O'Dea*, 10 H. of L. Cas. 614. See to same effect *Whitman vs. Heneberry*, 73 Ill. 109; *Gardner vs. Granniss*, 57 Ga. 539. So where, in order to prove a prescriptive right of fishery as appurtenant to a manor, ancient licenses to fish in the *locus in quo*, which appeared on the court rolls, and were granted by former lords in consideration of certain rents, were

tendered in evidence, Mr. Justice Heath, after argument, held that they were admissible without any proof of the rents having been paid; but he added that, "to give them any weight, it must be shown that in latter times payments had been made under licenses of the same kind, or that the lords of the manor had exercised other acts of ownership over the fishery which had been acquiesced in." So, when it became necessary to show that the land in question had been part of the estate of the lessor's ancestor, Sir William Windham, and when, in order to establish this fact, a document was produced from the muniment room of the property inherited from Sir William, which appeared to be a counterpart of a lease of this land made by him, but it purported to be executed only by the lessee, and no proof was given of actual possession under it, the Court of Queen's Bench, after consulting with some of the other judges, held that this deed was admissible in evidence. *Doe vs. Pulman*, 3 Q. B. 622, 626. And again, in a case relied on in the argument of that last cited, where the action was brought to try the title to the bed of a river, after proof of a grant from Henry VIII., two counterparts of leases were produced from the Duke's muniment room, comprehending the soil in question. No payment by a tenant was proved, nor any modern act of ownership; but Lord Denman admitted the instruments as coming from the right custody, observing that no circumstance in the case threw suspicion upon them, and that 'the absence of other kinds of proof was mere matter of observation.' *Bedford vs. Lopez*, cited 3 Q. B. 623."

7. They are competent to show the reputation of the existence of the grant and its boundaries, and to

lay a basis upon which, with the aid of the oral testimony, to supply all missing links and support a beneficial presumption of title.

Fletcher vs. Fuller, 120 U. S. 534.

Stephen's Digest, art. 100.

Gonzales vs. Ross, 120 U. S. 629, citing *Byrne vs. Fagan*, 16 Tex. 391-98.

2 Ph. Ev. (star), page 583, 584, *note*.

Clements vs. Machebeouf, 92 U. S. 418, 425.

Isham vs. Wallace, 4 Simon (star), p. 25.

Tucker vs. Wilkins, *Ib.* 242.

Boston vs. Richardson, 105 Mass. 351.

Malcomson vs. O'Dea, 10 H. of L. Cas. 593.

"Reputation respecting public rights may be shown by old deeds or other old documents, even though of a private nature, as well as by the oral declarations of deceased individuals. Thus where the question was whether certain land was in the parish of A, or in that of B, where the land was tithe free, ancient leases granted by the ancestors of the plaintiff's landlord, describing the land as being in the parish of B, were held admissible as evidence of reputation, notwithstanding that such ancestor had a direct interest in describing the land to be situated in that parish. *Plaxton vs. Dare*, 10 B. & C. 17. In the case of Cambridge Tolls, *Brett vs. Beales*, 1 M. & M. 416, a composition deed between the corporation of Cambridge and the university, regulating the amount of payment of tolls, was received as evidence of reputation of the existence of tolls. It appeared that the deed had not been exactly followed in practice, but it was held that this objection did not apply to its admissibility. So deposi-

tions in ancient suits have frequently been produced to prove reputation. *Freeman vs. Phillipps*, 4 M. & S. 493."

1 Ph. Ev., page 193.

The same principle applies to large Spanish and Mexican grants, to the proof of such boundaries as rivers and mountain ranges, coterminus public districts and a notorious ancient object, such as a ruined castle on the Rhine, or the more venerable "Pueblo de Cochiti."

Vide, *Martin vs. Folger*, 15 Cal. 275.

8. "There is a time when the rules of evidence must be relaxed. We cannot summon witnesses from the grave, rake memory from its ashes, or give freshness and vigor to the dull and torpid brain."

Elwell vs. Richards, 48 Pa. St. (12 Wright), page 367.

SEVENTH POINT.

The oral evidence on the subject of possession and claim was competent and sufficient to explain latent ambiguities, if any, in the documentary, and to establish a title by presumption and prescription.

A. "Acts of the writer of an ambiguous document, being less liable to misinterpretation than the oral expressions of intention, and more likely to exhibit the writer's real purpose, have been received, as to ancient documents, without the limitations just noticed as bearing on oral expressions of intention. Thus, in a leading case on this point, the House of Lords held that proof

of the application of the funds of an ancient charity by the original founder and first trustee, was strong evidence of intention, and might be so treated by the court in construing the grant. So, in a subsequent case, Lord Chancellor Sugden, while acknowledging that he could not receive evidence of declarations of the founder of an ancient charity as explanatory of his grant, held that it was admissible to inquire as to what acts such founder had done in relation to the charity. 'Tell me,' said this eminent judge, 'what you have done under such a deed, and I will tell you what that deed means.' 1 Dru. & War. 368. * * * It may further be laid down that all ancient instruments of every description may, in the event of their containing ambiguous language, but in that event alone, be interpreted by evidence of the mode in which property dealt with by them has been held and enjoyed. Weld vs. Hornby, 7 East, 199; Waterpark vs. Fennell, 7 H. of L. Cas. 650; Donegall vs. Templemore, 9 Ir. L. R. N. S. 374."

2 Whart. Ev. § 941.

B. Grants, patents, charters and even acts of Parliament, may be presumed from long continued claim and possession.

2 Whart. Ev., § 1348.

Sedg. & Wait, page 666.

Lewis vs. San Antonio, 7 Tex. 288.

United States vs. Beebee, 17 Fed. 39.

Hall vs. Horner, 1 Cowp. 102.

Mitchel vs. United States, 9 Pet. 711, 761.

Fletcher vs. Fuller, 120 U. S. 534.

United States vs. Chaves, 159 U. S. 452.

C. When Domingo Labadie, one of the Lucero family, claiming under the grant, showed its boundaries forty-four years ago to his son-in-law, the witness Roman A. Baca (*Transcript*, fols. 92, 93), and, right on the spot, pointed out the "Pueblo Viejo" as the northern boundary call, and also showed a large stone cross embedded in the ground to the east of that pueblo, near the Rio Grande, and two aged juniper trees, as three ancient markings of that boundary, he performed acts of ownership and made declarations which,—he being dead,—come within the full sanction of *Hunnicutt vs. Peyton*, 102 U. S. 333, 362; *Clement vs. Packer*, 125 U. S. 309, and *Ayers vs. Watson*, 137 U. S. 584, 596. Not being in any respect contradicted, this competent evidence must stand as sufficient.

D. There is perfect concordance among the witnesses—and no proof to the contrary—in their testimony, showing, from general reputation, as well as claim and user, that the northern boundary call is the Pueblo Viejo, east of Cuesta Colorada. *Vide* testimony of Manuel Hurtado (*Transcript*, fols. 76, 77); Roman A. Baca (*Ib.*, fols. 92, 93, 94); Felipe Sandoval (*Ib.*, fol. 98); José Sandoval (*Ib.*, fols. 107, 108); Zenon Sandoval (*Ib.*, fols. 113, 116); Pablo Lucero (*Ib.*, fols. 127, 128); Mariano Salas (*Ib.*, fols. 227, 228), and Juan Lopez (*Ib.*, fols. 243, 252). Besides, the only Indian witness testified that he had "heard by traditions the Pueblo Viejo" to be our north boundary (*Ib.*, fol. 71).

E. There is like concordance in their testimony—wholly uncontradicted—showing in like manner that the western boundary call is the Jemez mountains. *Vide* testimony of seven of the Mexican witnesses last above named (*Ib.*, fols. 76, 92, 98, 107, 113, 227, 243).

F. The testimony of common repute, while it embraces the common repute in the large community of the Luceros, also covers common repute in general. *Vide* references *supra*, and especially deposition of Juan Lopez (*Ib.*, fol. 252) that he had known this general reputation of the boundaries from about 1817 down to 1882, and that "these are matters of general repute among the people of that section, and have always been so."

G. It is precisely such testimony as is required by the Spanish law of prescription to establish a title against the crown, even without the aid of any writing whatever, for it covers an "immemorial period"—that is, forty years. "Title by prescription under the Spanish law was acquired, even against the king, by forty years' uninterrupted possession."

Lewis vs. San Antonio, 7 Tex. 288.

Immemorial possession "is proved by witnesses of good fame or character who depose to having seen the person in possession of the thing or property for forty years, and having heard their ancestors say that they never saw or heard anything to the contrary." (1 White, 95, § 10; citation from the old and the new "*Recopilacion*.")

It is equally applicable to establish a "temporal prescription," in view of the "just title," etc. (*Mitchel vs. United States*, 9 Pet., page 761), and to raise a conclusive presumption of a grant (*United States vs. Chaves*, 159 U. S. 452).

> "Sometimes the land itself, though capable of an adverse possession, has not been so enjoyed, but is affected by other acts running through a long series of years which have been deemed equivalent to adverse possession. In another instance, a title on paper is partially made only, and

> the residue (a link or links in the chain) sought to be supplied by presumption arising from possession," etc. * * * "In other instances, where, from the character and situation of the property and the want of deeds, neither an actual nor constructive adverse possession could be made out, so as to let in the statute, circumstances considered equivalent have been received as the ground for presuming a grant. In this way the heirs of Sir Peter Warren made out their title to a tract of 14,000 acres in Montgomery county," etc.

Vide, 1 Ph. Ev. (C. & H. & E.), note 190, (star) pages 661, 662.

H. In *Cavazos vs. Trevino*, 6 Wall. 773, a ruling below in favor the of competency of proof of acquiescence in a grant line by "*those claiming under* the Espiritu Santo Grant"—they not setting up an inconsistent claim "until within a comparatively recent period" (*Ib.*, page 780)—was sustained, this court saying (*Ib.*, page 785):

> "The practical interpretation which the parties, by their conduct, have given to a written instrument in cases like this is always admitted and is entitled to weight. *There is no better test of the intention of the instrument.* None are less likely to be mistaken. There is no danger of too large an admission. Safer testimony can hardly be presented in relation to any transaction occurring in human affairs."

Here we find, on the one hand, the heirs claiming under the grant, and, on the other, not only the adjacent Indian proprietors, but also the immediate representatives of the crown, *i. e.*, the governor and alcalde mayor, Armenta, acting in concert, in 1785, and the alcalde mayor, Baca, acting in 1817—it

being the sworn duty of these officials to protect the royal domain—all sanctioning our claim and possession.

I. And this oral testimony corroborates the documentary evidence of title, entry and possession, extending over the whole tract (*Hunnicutt vs. Peyton*, 102 U. S. 333), by making it clear that the grant, as an entire estate, was openly, exclusively, uninterrupted and continually held in actual possession for one hundred and sixty years and upwards, and even that such possession was persistently defended at the cost of blood and life against the attacks of savage Indians.

EIGHTH POINT.

It being plain that our body of uncontradicted and unimpeached evidence is competent, relevant, sufficient, overwhelming and conclusive, and that it was error to admit against us, over our objection (*Transcript*, fol. 154), the extraneous subject of recent, unlawful and outrageous trespasses on our estate, perpetrated while our rights and equities were *sub judice* under the sacred guard of national honor (*Newhall vs. Sanger*, 92 U. S. 761; *Trenouth vs. San Francisco*, 100 U. S. 251; *Cameron vs. United States*, 148 U. S. 301; also, 153 U. S., at p. 284; 158 U. S., at pp. 92, 93, and 162 U. S., at p. 378), the Land Court was in duty bound, spurning all suggestions of policy not within its lawful discretion, to accept our claim as fully established on the trial and render in our favor a conformable decree.

Vide Dr. Wharton's masterly disquisition on the "Nature of Proof," 1 Wh. Ev., book 1, chapter I, §§ 1 to 15, and on "Relevancy" (*Ib.*, chapter II., §§ 20 to 28), including his extract (*Ib.*, § 22) from

Müller's Lectures on Language, with reference to the beautiful use of hypothesis and deduction in the deciphering of the cuneiform inscriptions; also Mr. Justice GRAY's clear definition of "proof to a moral certainty," given by him as Chief Justice in *Commonwealth vs. Costley*, 118 Mass., at pages 23, 24, 25.

> "When we declare such a thing to be morally certain, because it has been confirmed by creditable witnesses, this moral certitude is nothing but a strong presumption grounded on probable reasons, and which very seldom fails and deceives us." *Citation, Ib.* (118 Mass. 24), from *Pufendorf.*

CONCLUSION.

In view of the high legal character and abundant equities of our title, which this court, with its varied experience and mature learning, will readily perceive, and because we believe that, in according to us our rights under the treaty, the court will see no occasion for severe technicality or over-strict scrutiny of mere formalities, since, in this class of cases, it proceeds in a paternal spirit to dispense sovereign equity, we have not felt it necessary to explore in the dark the ramifications of the archaic laws, customs, decrees, edicts, orders, cedulas and kingly caprices of Spain, to be found, in a more or less fragmentary and chaotic condition, in the accessible books on the subject—a task quite as perplexing as to attempt to trace the streamlets of ancient common law and special customs found in English jurisprudence to their possible sources in Saxon, Norman, Roman, Canon and other laws and institutes.

Nor have we deemed it important to describe and correct the vagaries of sciolous surveyors who

have from time to time dabbled in this kind of literature, even when they venture to quote an ancient law on the subject of pasturage on the royal lands and mountains, and because it regulated the conditions on which the public at large might have the privilege of free pastures to draw therefrom the Dogberrian conclusion that no pastures could be granted by viceroy or governor or other agent of the crown,— and this, notwithstanding that the same law expressly provided for such grants, and a later cedula (1754) expressly recognized prescriptive titles.

All this kind of inquiry and speculation seems to us to be forestalled in the present case by the merciful law of presumption and prescription. (*Fletcher vs. Fuller*, 120 U. S. 534; *United States vs. Chaves*, 159 U. S. 452; *Mitchel vs. United States*, 9 Pet., page 761.)

There is nothing in the lawless and unscrupulous intrusions of covetous strangers upon our estate, in the year 1894, *post litem mo tam*, made with guilty knowledge, in open defiance of our time-honored title, claim and possession, and of the fiduciary relations in which the government stood to us, as well as of the provisional survey publicly made and mapped fifteen years ago, to mitigate the judicial condemnation which such violations of good faith and social order deserve.

Our ancestors and predecessors in title, under the express authority of the Spanish king, founded their homes on this private domain in the year 1728, before the birth of George Washington or George the Third. At that time, George II. reigned in England, Louis XV. in France, and Philip V. in Spain.

Our possession was loyally maintained in bloody conflicts with the savages, while the war of the Spanish succession was raging in Europe, and the

French and Indian war in the American colonies, as well as afterwards throughout the war of American Independence, and, indeed, up to the ratification of the treaty by which we were put under the shield of the American constitution.

The potreros are monuments to the loyalty and bravery of Luceros slain in their defense and now mingled with the soil on the heights and in the vales. During all these generations, our title and possession were respected and sanctioned by Spain and Mexico. By the treaty, our own government pledged to us its faith to continue that sovereign protection. By its provisional survey, it acknowledged the Pueblo Viejo to be, at least *prima facie*, our northern limit, and the Sierra de Jemez our western; and the lands so surveyed are *sub judice* and not open to stranger entry. Not a serious disturbance of our possession occurred until after the presentation of our cause to the Land Court on the faith of the treaty and of the act of Congress establishing that tribunal. Our title being complete and perfect, it was under the immediate protection of the constitution. By the very terms of the statute we were excused from submitting it to the criticism of the government. Under the law of the land, we were entitled to defend it in the ordinary courts and before a common law jury, and also with the strong hand. But, waiving our immunity, we addressed ourselves to the honor and integrity of the government, in a peaceful judicial proceeding which it had benignly suggested in our interest. We appear not as adversaries, nor as supplicants, but as American citizens dealing with their government on equal terms, in a jurisdiction conferred by our free consent.

We have made the nation trustee of our rights, and in the pure and exalted atmosphere of its high-

est tribunal, we feel that they will be protected. (12 Pet., page 447; 19 How., page 365.)

Wherefore, upon the grand synthesis of all our proofs,—the volume of uncontradicted documents and testimony; the suggestive fragments of the old *testimonio;* the interpretation naturally suggested by the attendant certified copy and the recitals of numerous ancient instruments; the loss of the records by the governments concerned; the corroboration found in the judicial and executive proceedings of 1785; the maxim, "*ex diuruitate temporis omnia præsumantur rite et solemniter esse acta, ut res magis valeat quam pereat*"; the concordance and internal evidence of the history of our title; the fulfillment of all the conditions of the law of prescription and presumption; the convincing array of circumstantial as well as direct evidence—all uncontradicted and sufficient to establish our title and boundaries as claimed,—we pray this court to modify the decree so that it shall confirm to us that certain tract of land known as the Cañada de Cochiti grant, situate in the county of Bernalillo, territory of New Mexico, with boundaries as follows: on the east the middle line of the Rio Grande, on the north a line extending due east and west (through the center of the old juniper tree in the "tank" of the Old Pueblo de Cochiti on the Potrero de las Vacas), from the said center line of the Rio Grande to the top of the range of mountains next east of the Rio de Vallecito, which point is on the line marked "divide" on the "Harris map," on file in this cause, on the west by a line, following the divide of the said range of mountains and running southerly to a point in the protraction due west of the northerly boundary line of the present Pueblo de Cochiti as surveyed and patented by the United States, and on the south by the said

northerly boundary line of the Pueblo de Cochiti and the said protraction thereof to the above described western boundary of the Cañada de Cochiti grant as confirmed by this court.

Respectfully submitted,

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Counsel for Appellants.

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

THE LAW ASSOCIATION
OF
PHILADELPHIA.

OCTOBER TERM, 1896.

No. 271.

JOEL PARKER WHITNEY, ET AL.,
Appellants,
vs.
THE UNITED STATES, ET AL.,
Appellees.

Appeal from the Court of Private Land Claims.

APPENDIX TO APPELLANTS' BRIEF.

Having had access to a copy of Prof. Bandelier's "Final Report of Investigations Among the Indians," etc., we are enabled by the aid of that work to add to our argument the following corroborative suggestions:

1. Our Second Point, which is directed to the internal and circumstantial evidence in favor of our claim that the Sierra de Jemez is the western boundary of the grant, invites attention to the fact that the western boundary call intended was something of or pertaining to the Jemez country, as distinguished from the Cochiti country.

Final Report, part II, chap. V, page 200, etc., "The Country of the Jemez":

> "The Valles mountains separate the northern section of the Queres district from that claimed by the Jemez tribe. * * * The country inhabited by the Jemez tribe lies west of the Valles, and its upper portions might be described as similar to the region about the Rito de los Frijoles and south of it, were it not that its principal cañons run from north to south, or parallel to the mountain chains, instead of transversely, as in the Queres district. The deep clefts through which the Rio de San Diego, and west of it the Rio de Nuestra Señora de Guadalupe, converge to form the Jemez, are gorges exceeding in depth any of those on the eastern flank of the Valles chain; there is barely room for the trail beside the roaring torrent. * * * While the mountainous parts of the Queres range are dry, the Valles constitute a water supply for the Jemez country. * * * Thus the Jemez country is divided into two sections, the northern a series of plateaux intersected by deep clefts, and the southern constituting the low lands. This geographical division is in part also historical, since the Jemez tribe, when first discovered by the Spaniards, clustered around the hot springs, although at present they dwell in the sandy valley of the Jemez river above Cia. * * * Diego de Vargas visited the Jemez on their mesa a second time on November 26, 1693."

[In note, *Ib.*, page 213: "He went from the mesa of the Cias to 'la Cañada de los Xemes en cuya messa tienen su pueblo.' It seems, therefore, that the Jemez, after having abandoned their villages below, probably after 1688, remained on the mesas until 1694."]

Inspection of the Harris map (*Transcript*, between pages 164 and 165) will show, in conformity with the foregoing topographical statement of Bandelier, that the sierra, or mountain range, marked "Divide" runs substantially north and south, thus giving a like direction to the vale adjoining on the west, through which flows the stream now called the Rio de Vallecito; and will further show that the potreros and cañons to the east of that "Divide" are those of the "Queres [Cochiti] district," referred to by Bandelier (*Ib.*, page 201) as running "transversely," instead of "north to south, or parallel to the mountain chains," as do those which pertain to the Jemez district.

The "Divide" laid down on the Harris map is evidently the ridge of the *Sierra del Valle*, or the Valles mountains, mentioned by Bandelier. This is undoubtedly the same sierra or range mentioned in the preliminary report of the alcalde to the governor respecting the Ojo de Borrego grant (Surveyor-General's Report, No. 118), wherein the alcalde refers to the tract applied for as extending on the north to the skirt (*falda*) of the Sierra del Valle. It will be remembered that the Ojo de Borrego (Borrego's spring) just west of the Santo Domingo survey, is referred to by the petitioner for that grant as situate to the east of the Jemez mountains.

Our witnesses show that the boundary of our grant on the west is the "top" of the mountain range of Jemez (*Transcript*, fols. 76, 92, 98, 113, 227 and

243), and this practical construction of our title papers is in harmony with the familiar legal rule which interprets a call for a mountain range as treating the range as a natural enclosure up to its top. The Supreme court of California said, in Ornbaum vs. His Creditors, 61 California, 455, at page 459:

> "It would be a novel proposition of law in this state that a mountain or range of mountains is not a definite boundary of land. It is as much so as a tree, a rock, or a stream one half mile wide, in which the boundary would go *ad medium filum aquæ*. The boundary usually goes to the middle of the natural object named, except in the case of a range of mountains, *when it goes to the comb or dividing line of the ridge*."

And this has been the rule adopted by the Land Court in several confirmations which have become final.

Of course, the eastern boundary goes to the thread of the Rio Grande.

Hardin vs. Jordan, 140 U. S. 371.

2. Our contention that the "Old Pueblo of Cochiti," our northern boundary call, is the remarkable ruin on the Potrero de las Vacas, is abundantly supported by Bandelier. It will be noticed (Final Report, part II, chap. IV, page 139 *et seq.*) that, while referring to "the valley of the Rio Grande between the Rito de los Frijoles and the mouth of the Jemez river," he says: "The Queres Indians of New Mexico [including, of course, the Cochiti tribe] claim the range above described, asserting that the majority of the ruins scattered through it are those of villages of their tribe," and gives more or less attention to such of these ruins as are prominent in physical appearance, or in tradition, he

dwells with special emphasis on the subject of the strange ruin on the Potrero de las Vacas, ascribing to that great antiquity, as well as a conspicuous place in Cochiti traditions, and, as to the ruined pueblo on the "Potrero Viejo," west of the Cañada de Cochiti, he refers to it (*Ib.*, page 167) as a "comparatively recent pueblo;" adding (*Ib.*, page 171): "The well preserved pueblo on the Potrero Viejo must, therefore, have been constructed *after* that year [1683], and previous to the fall of 1692, when Diego de Vargas made his first appearance in New Mexico." In a note, on the same page, he says: "It should not be overlooked that the raid made in 1687 by Pedro Reneros Posada as far as Santa Ana, and especially the expedition of Domingo Geronza Petriz de Cruzate as far as Cia, in 1688, may have caused the permanent establishment of the Cochiteños on the Potrero Viejo. The affair of Cia was a bloody one, and placed the pueblos west of the Rio Grande in imminent danger."

After giving a minute history of the Potrero Viejo, the author concludes (*Ib.*, page 178) as follows: "I have been thus circumstantial in regard to the history of the Potrero Viejo, for the reason that the ruins on its summit are frequently spoken of as the 'old pueblo of Cochiti,' in the sense of the original home of that tribe. It will be seen that this is only partially correct. The oldest ruins on the mesa, which hardly attract any attention, are those of a prehistoric Queres pueblo; the striking well-preserved ones are those of a village built after the year 1683, and abandoned in April, 1694." These prehistoric ruins are what the witness Hughes referred to (*Transcript*, fol. 149) as being "simply mounds of earth that are characteristic of such ruins." Doubtless these old mounds are subject to the same observation made by the author respecting the ruins

of Kua-pa (which lie considerably southwest of the Mexican village in the Cañada de Cochiti), viz. Final Report, *supra*, page 165, etc.:

> "The ruins of Kua-pa look much more ancient than any of those on the potreros; but this is due to the material of which they are built. In place of blocks of tufa, loose rubble and adobe formed the bulk of its walls. Adobe disintegrates rapidly, and rubble forms heaps of disorderly rubbish. The ancient appearance of Kua-pa cannot therefore be relied upon against the testimony of historical tradition. Both the Indians of Cochiti and the inhabitants of the Cañada, who are well versed in Indian folk-lore concerning their valley, have asserted to me that Kua-pa was an old village of the Cochiti tribe, from which they moved to the banks of the Rio Grande where Cochiti stands to-day. The descendants of Spaniards living at the Cañada also confirmed the more ancient Cochiti tradition, saying that the Queres had successively built pueblos on the potreros between the Cañada and the Rito de los Frijoles, finally establishing themselves at Kua-pa. They attributed this gradual southerly movement of the Queres tribe to the persistent hostility of their northern neighbors, the Tehuas. In regard to this, the Cochiteños only state that the village of Kua-pa was once attacked by the Tehuas and captured. The survivors retreated to the Potrero Viejo; the Tehuas pursued, but their attack upon the lofty cliff signally failed. * * * In consequence of these hostilities, the survivors established themselves on the potrero for a short time, whence they descended to settle where Cochiti stands to-day. * * * It seems probable that the branches of the Queres now constituting the tribes of Cochiti and San Felipe, once formed one group at Kua-pa; that some hostile invasion caused

> their dispersion, one branch retiring to the south, while the other took refuge on the Potrero Viejo and built a temporary village at least on top of this almost impregnable rock. I regard it as not at all unlikely that the aggressors were Tehuas, since this has been told me by the people of Cochiti on many occasions. The settlers at the Cañada emphatically confirmed these statements, as having been told ever since their ancestors settled there by the old men of Cochiti as genuine traditions of their tribe. At all events, the valley of the Cañada and its surroundings were the last station of the Queres of Cochiti, and probably of San Felipe, before they established themselves on the banks of the Rio Grande."

We thus see why the mesa or potrero became known as the "Potrero Viejo"—it having in very ancient times been a place of refuge in emergencies, because it was "a natural fortress" (*Ib.*, page 167). It was the mesa or potrero itself that was always kept fresh in memory as an object of antiquity—and neither the ancient "mounds" there, nor the still more ancient ones of Kua-pa, seem ever to have been designated either by Indian or Spaniard as "the old pueblo"; nor, until very recent times, does the term "old pueblo" appear to have been applied to the "comparatively recent pueblo" on the mesa of Cochiti.

The references to this "point of identification" made by Bandelier and the old chronicles which he cites are very numerous, but none of them relate to any "old pueblo." Bandelier frequently uses the term "Potrero Viejo," but the chronicles mention the place as "the mesa" ("la mesa"). *Vide*, *Ib.*, pages 161, 164, 165, 166, 167, 168, 169, 171, 172, 173, 174, 175, 176, 177, 178. In the Spanish citations found in the notes, the place is almost uniformly

referred to as the *mesa*, and occasionally as the *pueblo*, without any adjective suggesting antiquity. It is plain that none of the soldiers of the time thought of the pueblo on the mesa as an *old* structure. De Vargas does indeed once refer to the pueblo on the Rio Grande as "Cochitti el Viejo," saying (*Ib.*, page 168, *note*): "Salió de la mesa y llegó á Cochitti el Viejo que despoblaron los Reueldes alzados que se hallaban poblados en la sussodha mesa de Zieneguilla." [Cieneguilla, or Zieneguilla, primarily means a small wet meadow, but is here doubtless applied to the agricultural bottom lands east of the "Potrero Viejo."]

The old witness Mariano Salas, who was born at the Cañada de Cochiti in 1808 and knew its boundaries personally and also from what his father had told him (*Transcript*, fol. 229), showed (*Ib.*, fol. 227) that possession was held up to "el Rito de los Frijoles."

Bandelier (Final Report, *supra*, page 145) refers to "the elaborate folk-lore attached to the Rito de los Frijoles;" adding:

> "The people of Cochiti told me that the caves of the Rito, as well as the three pueblo ruins [in that vicinity], were the work of their ancestors, when the Queres all lived there together, in times much anterior to the coming of the Spaniards. The place is called Tyuo-nyi in the Queres language, a word having a signification akin to that of treaty or contract. It was so called because of a treaty made there at some remote period, to which certain of the Pueblo tribes, probably the Queres, Tehuas, and perhaps the Jemez, agreed that certain ranges loosely defined should belong in the future to each of them exclusively. The Queres also told me that their ancestors, after having dwelt at the Rito for a con-

siderable length of time, began gradually to leave it in bands, in order to build pueblos on the mesas south of the Rito. * * * This tale was told me at different times, and by members of different clans and esoteric groups, and therefore seems to be a tradition common to the tribe of Cochiti in general. The medicine-men of Cochiti still visit the Rito frequently, to pay homage to the Shi-ua-na, or spirits that are supposed to be the particular Genii of their pueblo, and still to hover about the caves and ruins. To any one acquainted with the Pueblo Indian beliefs, this last custom will appear conclusive evidence that the Rito was, in times long past, the home of that branch of the Queres which now occupies the pueblos on the Rio Grande—Cochiti, Santo Domingo and San Felipe. * * * The definite historic tradition of the Queres of the Rio Grande seems to begin near the banks of that river, at the Rito de los Frijoles, which appears as the starting point of a dispersion, of which perhaps all the Queres pueblos, certainly those along the Rio Grande and in the Valles chain, were the result."

On page 150 of the same volume begins a description of the Potrero de las Vacas and of the remarkable ruin identified by our witnesses, both Indian and Mexican, as the old pueblo, which is our northern boundary call:

"Up this slope [of the mesa Prieta] toils the almost undistinguishable trail to Cochiti. From the crest we overlook in the south a series of rocks and wooded heights, and in the west a ridge flanked by gorges on both sides. The ridge is the end of a long, narrow plateau, sloping gently towards the mesa Prieta from the eastern base of the Sierra de San Miguel. The name of this tongue is Potrero de las Vacas, *and on it*

stand some of the most remarkable antiquities in the southwest. * * * Towards the eastern end of the Potrero the forests begin to thin out and an open space extends until within half a mile of the rocky pedestal of the San Miguel Mountains. On this open space stands the ruined pueblo shown on plate I, figure 11. Like all other pueblos of this region, it is built of blocks of pumice or tufa, nearly rectangular, but now much worn. I counted 280 cells on the ground floor, and the average size of 126 of them proved to be 4.3 by 2.7 meters (14 by 9 feet). Six estufas are visible, four inside the courtyard formed by the houses, and two outside. The courtyard is open to the southeast, and the whole forms practically a one-house pueblo, the buildings of which were at least two stories in height, and in some places three and perhaps four. To the southeast of the ruin, on the edge of the woods, stands the remains of an artificial tank. The population of this village cannot have fallen short of five hundred souls. In the courtyard, not far from the largest estufa, the diameter of which is 14 meters or 46 feet, I noticed a long slab of red stone, 0.26m. broad and 0.18m. thick, broken into two pieces respectively 1.60 and 0.87m. long, the whole length being therefore 2.47m. (8 feet). The edges were roughly squared, and on one of the broad surfaces it had grooves like rude footmarks. My Indian guide asserted that this slab was a gua-co, or ladder, by means of which the roof of the estufa was reached, and that the grooves were carved to facilitate ascent. Not far from the place where this primitive ladder rested was the upper part of a stone post, one end of which was shaped like a colossal arrow-head, but what this was intended for I cannot surmise. It was made of hard lava, and may have stood originally in a

different place. * * * A very interesting find was made at this pueblo in 1885, by Governor L. Bradford Prince, of New Mexico, who obtained a number of stone idols, rudely carved human figures, some of them of large size, belonging to the kind called by the Queres Yap-a-shi. ['Yap-a-shi is a generic name given to fetiches representing human forms. * * * Many of them represent the same deity or idol, and they ordinarily serve for magical purposes.' *Note*, page 152.] The name of pueblo of the Yap-a-shi has accordingly been applied to the ruin, but its proper name is still unknown to me, as the designation current among the people of Cochiti, Tit-yi Ha-nat Ka-ma Tze-shum-a, signifying literally 'the old houses above in the north,' with the addition of Mo-Katsh Zaitsh, or 'where the panthers lie extended,' is subsequent to the abandonment of the village. This name refers to the life-size images of pumas or American panthers (also called mountain lions) which lie a few hundred yards west of the ruin, in low woods near the foot of the cliffs called 'Potrero de la Cuesta Colorada.' These remarkable stone objects, cut out of the tufa which constitutes the surface rock of the Potrero de las Vacas, have already been noticed in the publications of the Institute. * * * An irregular pentagonal enclosure surrounds the images, made of large blocks, flags and slabs of volcanic rock, some of which are set in the ground like posts, while the majority are piled on each other so as to connect the upright pillars. * * * When I last saw the monument it looked like a diminutive and dilapidated Stonehenge. * * * In the enclosure I found nothing but a few bits of pottery and obsidian, possibly the remnants of sacrificial offerings; but it would have been

> in the highest degree injudicious to attempt excavations on this spot, *as it is still held sacred by the Indians of Cochiti.* * * * Nothing similar to it has ever been discovered in the southwest outside of the Queres country. They are the largest images or statues known to have been executed by Pueblo Indians. * * * All I could ascertain was that they were fetiches of the panther, Mo-Katsh, and as such belonged to the special esoteric group of the Hunters (Shya-yak), of whom the panther is one of the principal protectors and 'intercessors.' That a certain devotion is still paid to them I am certain, for my Indian friends acknowledged it to me, and two of them smeared the heads of both images with red ochre in my presence, while they muttered prayers between their teeth. The Indians also asserted that the images were made by the same people who built and occupied the old village. According to their tradition, the first band or group that seceded from the tribe at the Rito wandered as far as the Potrero de las Vacas, and there built the pueblo which is now in ruins. They also carved the images of the panthers, and made the enclosure around them. * * * The only thing that seems to me fairly well established is that the pueblo on the Potrero de las Vacas was a former Queres village, built while the caves at the Rito were still partly inhabited by people who had emigrated from the latter site for reasons as yet unknown, and that it was abandoned long previous to Spanish occupation."

The author then (*Ib.*, pages 158, 159) describes other ruins on the Potrero Chato at the foot of the Sierra San Miguel, as to which he says that the Queres of Cochiti "emphatically claim it as one of the former abodes of their tribe, after they had left

the Potrero de las Vacas." Again (*Ib.*, pages 162, 163) he mentions certain ruins on the Potrero de los Idolos, and adds:

> "The Indians state that the village of Kua-pa was built by their ancestors after the pueblo on the Potrero Chato had been abandoned, and that it was consequently their third station after the evacuation of the Potrero de las Vacas. Indeed, the tales of historic import are more positive and detailed in regard to the ruins in the Cañada de Cochiti [apparently referring to those of Kua-pa], showing that the past of these places is *less remote than that of the more northerly ruins*."

It follows, from what Prof. Bandelier says, that the very ancient ruins—mere mounds—of Kau-pa, which "lie about a mile and a half lower down the valley than the present Mexican settlement" (*Ib.*, page 164, also page 162), and consequently near to the southern boundary of our grant, possess far more of antiquity than any others in the vicinity of the Cañada, and yet we find no evidence that either the ruins of Kau-pa, or those on the Potrero de los Idolos, or those on the Potrero de Chaco, or those of "Cuesta Blanca," are prominent in the Indian or Spanish mind as special and conspicuous objects of antiquity. On the contrary, they all seem to have fallen into the general and indefinite category of commonplace ruins, without special distinction, and but little regarded; whereas the specific ruin on the Potrero de las Vacas stands out in appearance and tradition as a thing of wonder and peculiar fascination, well known and venerated as the prehistoric home of the Cochiti Indians.

3. In a note to the same volume (*Ib.*, page 164), reference is made to our grant:

"The grant of the lands in the Cañada de Cochiti constitutes the original title to the site. This grant was made in 1728 by Governor Don Juan Domingo de Bustamente. *Merced de la Canada de Cochiti*, M. S. In the year 1782, the cañada was inhabited by 184 Spanish settlers. Morfi, *Descripcion Geografica*, fol. 104. In the first half of this century the Navajos became so troublesome that the settlers had to abandon their homes for several years, fleeing to Cochiti. Some of the older men now living were among those who remember those dismal times, and many ruins of Spanish ranches bear testimony to the depredations of the savages. In 1833 the cañada was inhabited by 408 people. Francisco Albino Aragon, *Plano que manifiesta el Numero de Almas que hay en esta Alcaldia de S. Buenaventura de Cochiti*, M. S. To-day there are about 150 souls; in 1829, there were 248. José Manuel Baca, *Estadistica*, M. S. The Cañada was temporarily abandoned in February, 1835. Jesus Maria Cabeza de Vaca, *Carta al Gefe Politico*, April 9, 1835, M. S."

According to the custom which prevailed under Spanish rule and was continued after the establishment of the republic, the grant took its popular name from its controlling physical feature, namely, the Cañada de Cochiti, wherein there was a supply of water, and the only considerable tract of land susceptible of easy irrigation. Following this custom of designating grants by some prominent topopraphical feature or land mark, specific names were given, in course of time, to numerous grants, such as Agua Prieta, Agua Salada, Alamo, Algodones, Ojo del Apache, Arroyo Hondo, El Badito, Ojo de Bernal, Ojo del Espiritu Santo, Cañada de los Apaches, Cañada de San Francisco, Cañada de Santa Clara,

Cañada de las Mesteñas, Cañon de Perdenales, Cañon de Chama, Cañon de Carnue, Cañon del Rio Colorado, Caja del Rio, Ojito de Galisteo, Las Huertas, Las Lagunitas, Ojo Caliente, Ojo de Borrego, Rio del Oso, Tierra Amarilla, etc., many of which are very extensive in area.

Therefore, the mere name sheds no light on the question of the boundaries of a grant.

Such names were not usually given at the time of making the respective grants, but they came into vogue in course of years, just as nicknames do, by customary adoption.

When we consider the importance, numerically and otherwise, of the Lucero settlement founded by the grantee, it is incredible that, if the original grant was only the poverty-stricken and pastureless tract suggested by the Land Court's decree, the members of that family should have refrained, for nearly one hundred and seventy years passed under the successive governments of Spain, Mexico and the United States, from applying for an increase of their holdings.

A mere glance at the map published by the government will show how extensive is the usual area of outlying Spanish grants. Our area, as indicated by the Harris map, can hardly exceed eleven square leagues, — the quantity of land which any worthy citizen of Mexico could easily get for the mere asking under the colonization law and regulations of 1828—upwards of a century later than the date of our title.

167-529

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

JOEL PARKER WHITNEY ET AL., appellants,
v.
THE UNITED STATES ET AL.

No. 271.

STATEMENT, ABSTRACT, AND BRIEF ON BEHALF OF THE GOVERNMENT.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

JOEL PARKER WHITNEY ET AL., appellants, v. THE UNITED STATES ET AL. } No. 271.

STATEMENT, ABSTRACT, AND BRIEF ON BEHALF OF THE GOVERNMENT.

On March 2, 1893, Joel Parker Whitney and others filed their petition in the Court of Private Land Claims for the confirmation of what is commonly known and called the "Cañada de Cochiti grant," situate on the Rio Grande River, in the county of Bernalillo, Territory of New Mexico; the claim as made by the petitioners contains over 100,000 acres.

On the day following, Manuel Hurtado and José Antonio Gallegos filed a suit against the United States for the confirmation of the same land, claiming under the same title.

On the 2d day of September, 1894, it appearing to the Court of Private Land Claims that these two suits were

for the same property and under the same original title, the court ordered them to be consolidated and to proceed as one cause. (Rec., 17–18.)

It is claimed that on the 2d of August, 1728, the King of Spain, by Juan Domingo de Bustamente, governor of the Royal Province of New Mexico, upon the petition of one Antonio Lucero, made a grant of a certain tract of land, bounded and described as follows: On the north by the old pueblo of Cochiti; on the east by the Rio del Norte (otherwise called the Rio Grande); on the south by the lands of the Cochiti Indians, and on the west by the Jemez Mountain, with its entrances and exits, watering places, uses, and customs. That the granting decree for said land was signed by the governor on said date and countersigned by Antonio de Cruciaga, his secretary of state and war, and it directed that the grantee should be placed in royal and personal possession under the boundaries described in said petition, and under the conditions prescribed by the royal ordinances in that behalf as to the settlement of the same. It also directed that after the possession of the land had been given to the grantee the original *expediente* should be returned to the governor, to the end that duplicates thereof might be given to the grantee; that in execution of said decree, Capt. Andres Montoya, chief alcalde of the pueblos of Cochiti, Santo Domingo, and San Felipe, gave to the said Lucero juridical possession of the land on August 6, 1728, executing and delivering the act of juridical possession on the premises in due form of law in the presence of his attending witnesses.

It is alleged in the petition that the granting decree and act of juridical possession were returned to the governor and placed in the royal archives at Santa Fe, N. Mex., and that a *testimonio*, or duplicate thereof, was delivered to the grantee; and it was averred that the said *testimonio* was not in the possession, custody, or control of the petitioners, but that the same was deposited in the governmental archives at Santa Fe upon the cession of New Mexico to the United States, and has ever since been in its custody.

It was also alleged that Antonio Lucero settled upon, occupied, improved, enlarged, and claimed the land in fee simple openly, continuously, and uninterruptedly from the date of the act of possession, August 6, 1728, for a period much longer than four years, up to the time of his death, and that he died fully seized and possessed of the same; and that his heirs at law and legal representatives have ever since continued under the same claim of title, peaceably occupying and possessing the same, save only in the year 1775, when it was intruded upon by one Antonio Gallego, a lieutenant in the military service at the place called Cañada del Medio, under pretense of authority from Governor de Anza to occupy and use the cañada for the pasturage of the royal cavalry. That in the month of November, 1785, Antonio Lucero de Godoi and numerous others, descendants and heirs at law of said original grantee, presented their petition to Antonio de Armenta, chief alcalde and war captain, having, as alleged, judicial and administrative jurisdiction in the premises, complaining of the said intrusion by the lieu-

tenant, Gallego, and asking for relief in the premises. It was alleged that, in view of said petition, Armenta, the said chief alcalde, reported said petition and the subject-matter thereof to the governor; and, upon due consideration of the petition, the governor found and determined, and so declared in substance to the chief alcalde and war captain, that, inasmuch as the petitioners were in all respects the legal heirs of the said tract of land, they were entitled to occupy the same in preference to any other individual, and the said intrusion by the said Lieutenant Gallego was unjust and unfounded.

It was alleged that thereupon the chief alcalde and war captain, under full authority in that behalf conferred upon him by the said governor, duly made his order and judgment, reciting the petition, report to the governor, and the determination of the superior authority thereon, adjudging and declaring that the said order and judgment, being an instrument in writing signed by the said chief alcalde and his witnesses, should remain as conclusive evidence of the right of title of the said heirs to the said land granted and its rightful acquisition by them and their descendants from the King of Spain; and by the said instrument, the said alcalde, in the exercise of the judicial jurisdiction legally vested in him, declared that the same should remain before any tribunal as evidence for all time of the title of the heirs to the tract of land granted.

It is alleged in addition that the originals of said petition and adjudicatory instrument were in the possession of the respondent and kept in the archives at Santa Fe.

It is alleged that the petitioners are interested in said tract under the original grantee by diverse mesne conveyances from his heirs and legal representatives.

It is also alleged that all conditions, precedent and subsequent, of the said grant, at any time incumbent upon the said grantee, his heirs or assigns, have been fully performed and discharged.

It is also alleged that the claim was presented under the act of Congress of July 22, 1854, to the surveyor-general of New Mexico, and that the same was examined, considered, and approved, to a limited extent, by Surveyor-General Atkinson, and was recommended by him to Congress for confirmation in his report No. 135, dated August 25, 1883, and that the same was subsequently investigated by Hon. George W. Julian, surveyor-general, and Hon. William A. J. Sparks, Commissioner of the General Land Office, and an opinion adverse to the same promulgated, but it was alleged that the latter opinion was without jurisdiction. Then follows the general prayer for relief. (R., 1–5.)

The abstract of title filed by the plaintiff is found on pages 8 to 14 of the record.

The answer of the United States puts in issue the allegations of the petition generally, and specifically denies that the alleged granting decree and act of possession were returned to the governor and placed in the royal archives at the city of Santa Fe, N. Mex., and denies that a *testimonio* or duplicate thereof was delivered to the said original grantee under and by virtue of the direction of the governor, and denies that the alleged

testimonio or duplicate was ever placed in the governmental archives at Santa Fe upon the cession of New Mexico to the United States, for the reason that there was no necessity for nor any law authorizing the same, but that the owners or alleged owners of the grant were the only proper custodians of said alleged *testimonio*. It denies specifically that Lucero ever entered upon the tract of land sued for, and occupied or appropriated the same, as alleged in said petition, for the reason that it was impossible and impracticable for him so to do, because, under the conditions of the country at the time and for more than a century thereafter, it was impossible for Lucero or anyone else to occupy, appropriate, or use, directly or indirectly, the grant described in the petition; all of which Lucero knew at the time he applied for said grant.

As to the allegation that in 1785 Antonio Gallego intruded in the Cañada del Medio, an alleged portion of said tract, upon the pretense that he had authority from the governor to use the same for the pasturage of the royal stock, the Government alleged that it had no knowledge or information; nor as to whether in said year Antonio Lucero de Godoi and others, claiming as descendants of Lucero, presented a petition to Armenta, chief alcalde, complaining of said intrusion and asking for an investigation of the same or for relief. Nor has it any knowledge or information as to whether Antonio Armenta, alcalde, reported said petition or the subject-matter thereof to the governor of New Mexico; nor as to whether in passing on said matters, the said alcalde had any author-

ity to act in that behalf under the authority of said governor; nor as to whether said alcalde undertook to make a finding in said matter; nor as to whether he undertook to or did attempt to make the allegation set forth in the petition, but it was alleged that if he did do so, the same was without warrant or authority of law and without any direct order from the governor, and that the said alcalde had no power or authority in that behalf except such as might be conferred upon him for that purpose by direct order of the governor of the province, and the Government therefore denied that said alcalde had jurisdiction in the premises, and denied that any jurisdiction was shown in that behalf.

It denied that the originals of said petition and adjudicatory instrument, dated in the year 1785, before referred to, were or ever had been in the said archives; that if the same were in the possession of the surveyor-general they were filed with him under the law of July 22, 1854, which provided for the adjustment of private land claims in the Territory of New Mexico, and that they never constituted part of the archives of the Spanish or Mexican Governments; and no action was ever taken upon said alleged acts of said justice by the governor of the province; and, therefore, it constituted neither adjudication nor admission on the part of the Spanish Government, but was simply an unauthorized and unapproved act of an alcalde.

Further answering, it was alleged by the Government that if such grant was made in the year 1728, as alleged, it was never presented to the governor of the province

for examination and adjudication under the provisions of the *cedula* of October 5, 1754; that by virtue of the provisions of said *cedula* and by virtue of the failure of said grantee and those claiming under him to present said grant as provided, the same was deemed to be abandoned and all rights therein conferred should no longer be considered a claim against the United States.

Further answering, the Government alleged that the petition by Antonio Lucero was one for a small piece of land on which to cultivate ten *fanegas* of wheat and two of corn and to pasture small stock and horses; that the boundaries designated in said petition were only to indicate the district of country within which said small piece of land was located; that in acting upon said petition, if he ever did, the said governor did not make a grant, but specially reserved that act until after the alcalde should have placed the petitioner in possession of the property and returned the *expediente* to him for final action, which was never done, and, therefore, no grant, either legal or equitable, was ever made. (R., 14–17.)

The outboundaries claimed by the petitioners in this case conflicted with the outboundaries claimed by the claimants of three other grants, the Ramon Vigil grant in 1742, the Rito de los Frigoles grant made prior to 1780, and the Cañon de Santiago grant made in 1788 and 1798; also the Ojo de Borrego grant made in 1768; but as these claims were tried prior to this case, and either rejected or the boundaries claimed so very materially reduced that they in nowise conflict with this grant, I deem it unnecessary to further notice them.

The title papers upon which this claim is based are fragmentary, incomplete, and were produced from private hands, in a mutilated condition, and were not found in the archives at Santa Fe, as they should have been and as was alleged in the petition. What is supposed to be the original petition in Spanish, very much mutilated, is found in the record on page 107, and the act of the governor, mutilated and unsigned, on page 108. It is to be borne in mind that these two mutilated documents, *without the act of possession*, were produced by the claimants themselves, and filed in the office of the surveyor-general under the law of July 22, 1854. Following, however, these two mutilated documents is found a copy, plaintiff's Exhibit 2. (R., 108–109.)

Translations of the fragments of the original are found on pages R., 111–112, and translation of the copy, or plaintiff's Exhibit 2, is found on pages R., 112–114.

I desire to call special attention to the certificate attached to this copy, or plaintiff's Exhibit 2, an evident attempt having been made to supply by oral testimony the mutilated and lost portions of the original. It is as follows:

> It is a true, faithful, and legal copy of the documents of grant to which they refer, of which, as they are incomplete and very badly treated, this copy has been made with great labor before the witnesses of my attendance, who saw it made, corrected, and amended from the original instruments, so that it may at all times so appear, and which were produced before me, Juan Antonio Cabesa de Baca, chief alcalde of Cochiti and its jurisdiction, I

authenticating the same in due form on the 30th day of the month of December, in the year 1817, and in testimony of the fact I sign the same with the witnesses as aforesaid, to which I certify.

JUAN ANTONIO CABESA DE BACA.

Attending:
JUAN ESTEVAN ARAGON.
Attending:
JUAN GONZALES.
Attending:
SEBASTIAN SALAS.
Attending:
LUIS MARIA CABESA DE BACA.

Before me, Juan Antonio Cabesa de Baca, chief alcalde of the jurisdiction of Cochiti, and the witnesses of my attendance, do cede the same right which the legitimate heirs of this grant to all there may be living upon said tract, they having contributed all in common to paying the amount of fees for this grant, and that it may so appear in all time I signed this as aforesaid, to which I certify.

JUAN ANTONIO CABESA DE BACA.

Attending:
JUAN ESTEVAN ARAGON.
Attending:
JUAN GONZALES.
Attending:
SEBASTIAN SALAS.
(R., 113–114.)

I know of no law, either Spanish or Mexican, by which an alcalde had any authority to take such proceedings, nor is it shown that there was any special order given to the alcalde by the superior authorities of the territory for

this purpose. But for the purposes of the case, treating this copy (plaintiff's Exhibit 2) as a correct and lawful copy of the original, it appears that Antonio Lucero, a citizen of Albuquerque, by petition stated that he was a man of family, had no place to live, and registered a piece of land *which is situate at the mesa of Cochiti* (*en la mesa de Cochiti*), *to which the Indians who rebelled retreated*, to plant thereon and on said piece of land to cultivate 10 *fanegas* of wheat and 2 of corn, and to pasture his small stock and horse herds; said land is bounded on the north by the old pueblo of Cochiti, on the east by the Del Norte River, on the south by the lands of the natives of said pueblo, and on the west by the Jemez Mountain, with its entrances, exists, watering places, uses, and customs, etc. (R., 12.)

It is evident from this petition that the land actually sought to be appropriated by Lucero could not have been large in extent, and the identity of its location "at the mesa of Cochiti" is easily determined, as will appear later.

On August 2, 1728, the governor directed that the alcalde of Santo Domingo and Cochiti should go and examine said piece of land, citing the natives of said pueblo and others who might live adjoining, and there being no opposition or obstacle, and without prejudice to third parties having a better right, the grant will be made to him in the name of His Majesty, and he will be placed in royal and personal possession under the boundaries he refers to, and having acquired the same, he will not be disturbed, etc., and he shall settle the same within

the time the royal ordinances prescribe, and said possession being given, the alcalde shall return the originals to the governor in order that duplicates might be furnished. This is certified by Antonio de Gruciaga, secretary of state and war, purporting to be by command of the governor; the signature of the governor is wanting, and evidently was never given, otherwise the secretary would not have signed.

The act of possession does not designate the boundaries, but simply recites that Lucero was conducted over the land in his own lawful possession, there being no person whatever who under a better right might claim the same, and made the customary signature before his attending witnesses, etc. (R., 113.)

Then follows the certificate of Cabesa de Baca attempting to legalize the foregoing complete instrument as lawful evidence of the grant. It will be noted, however, that in addition to attempting to reproduce the mutilated document and legalize the same, he undertook to extend rights to other parties living upon the grant, who were not the heirs of Lucero, because they had contributed to the payment of the fees for the grant, which were evidently Cabesa de Baca's fees for supplying the same. (R., 113–114.)

All of the alleged official documents relating to this grant were produced from private hands between 1860 and 1870, and it is evident that from the date of the grant (1728) to 1860 or 1870 there was no record of the same conveying information either to the officials or the public of the existence thereof. Ramon A. Baca and Felipe Sandoval, both interested in the grant, testified that they

as commissioners filed all the papers with the surveyor-general. (R., 63–64.) See also deposition of Sandoval taken before the surveyor-general in 1882. (R., 142–143.)

A great deal of testimony was taken with reference to the north boundary of this grant, and there is practically little dispute about the same except such as arises in the testimony of witnesses who are interested or have been materially interested in the establishment of the same. I wish to call the court's attention to the peculiar condition of affairs running all through the testimony. No witness, when carefully examined, except those interested, claims or contends that Pueblo Viejo (old pueblo), which is now claimed to be the north boundary of the grant, ever had originally the name Cochiti associated with it. But the particular pueblo to which the name Cochiti was given is the ruined pueblo on the Mesa Cochiti, to which the Indians retreated on the reconquest by De Vargas. The mesa at this pueblo and all of the lands that have ever been occupied or cultivated, and all the settlements that have been made within the Cañada de Cochiti grant will be found to be clearly south of a line drawn from the north side of the ruins of this pueblo on the Cochiti mesa directly east to the Rio Grande River. In examining the testimony I ask the court to distinguish between Pueblo Viejo (old pueblo) and Pueblo Viejo de Cochiti (old pueblo of Cochiti), the latter being the ruined pueblo on the Mesa de Cochiti.

The testimony of John Dixon, one of the most intelligent Indians I have had occasion to examine in the performance of my duties before the Court of Private Land

Claims—and from the whole of his testimony he is evidently attempting to tell the truth—shows that he never heard of Pueblo Viejo being called Pueblo Viejo de Cochiti (R., 40–44), and particularly his testimony on examination by counsel for the complainant (R., 45).

In addition to the grant documents presented by claimants, the original document of the proceedings in the year 1785, taken by Alcalde Armenta, are offered. It will be noted that this is an original document, and does not appear to have been returned to the governor, nor does it appear by the testimony that any action was ever taken thereon. It consists of a petition by Antonio Lucero de Godoi and others to Antonio de Armenta, chief alcalde, wherein they claim to be residents of the jurisdiction of Cañada de Cochiti and heirs of the place, complaining that their lieutenant was seeking to possess for himself to the exclusion of the others for the purpose of pasturing a few cavalry horses part of the tract which they claimed the right to hold, and asked that he examine into the matter so that their rights might be protected. (R., 114–115.)

Upon this petition Alcalde Armenta seems to have acted, reciting that the petition presented by the heirs of Antonio Lucero made it appear to him that an injury was being done by Antonio Gallego seeking to reserve the Cañada de en Medio solely for the cavalry to the exclusion of themselves. He recites that Gallego made request of Governor Anza for the same, but that he (Armenta) had made report of the matter to the governor of the complaint, and he was answered that at any time the community or

their neighbors objected, that the said heirs should enjoy what was so lawfully their own, for they should be preferred to every individual, and furthermore, when they were in all respects the legal heirs to said tract, it was doing them a harm very grievous. The substance of the same is that the heirs and their neighbors had more right to pasture upon the same than did Lieutenant Gallego, and hence they had not conceded that he had any rights thereto and came to him, the alcalde, complaining of the matter. He further states:

> I answer that more right attaches to them for the reason of their being in all respects more entitled than an individual to whom by favor only had been given permission that he might raise a few sheep, and hence wanted to call it his own, without having any title or document which might accredit its being his; wherefore, and under the authority which is on me conferred, I give them the present instrument, so that before any tribunal or judge it shall be presented they may be heard in justice with the right which since their grandfathers and fathers they acquired by royal grant, etc. (R., 115.)

He also recites that in order that it might appear so for all time, he executed the instrument and delivered it to the parties.

It will be noticed from the map that the Cañada de en Medio is north of the northern boundary claimed by the Government and somewhat south of the boundary contended for by the claimants.

This proceeding does not seem to have ever received the approval of the governor, nor does it appear that it

was intended that such should be the case, as the alcalde executed the same and delivered it to the parties without any reference to future action on the part of the superior authorities. Nothing appears, except the recital of the alcalde, of any authority to take action in the matter, and if a previous report of the complaint was made to the governor and any orders were given, following the usual custom, the governor would have made an indorsement on the petition requiring the alcalde to make up an *expediente* of the matter, together with his findings, and return it to the governor for future action; but this does not seem to have been done, nor does the proceeding show that the governor authorized a specific adjudication and finding by the alcalde. (R., 115–116.)

Claimants also introduced in evidence a proceeding concluded in the year 1768, plaintiff's Exhibit 5. (R., 131–134.)

Bartolomé Fernandez, the alcalde mayor of the pueblos of the Queres nation, brought to the notice of the governor that at the place commonly called El Capulin, contiguous to the pueblo of Chochiti, some residents, called the Romeros, were settling therein, and during all the time he had lived in the country he had never seen said tract settled, which was the pasture land for the horses and stock of the said *pueblo* and *other residents of the kingdom*, and not knowing of any grant having been made to authorize such settlement, he informs the governor of the fact. (R., 131.) Such statement by Fernandez is inconsistent with ownership in the Luceros.

Then follows a document dated April 11, 1765, signed by Bartolomé Fernandez, which is very peculiar in its make-up, wherein he recites that having examined the question made by the alcalde mayor of the pueblos of Santo Domingo, Bartolomé Fernandez, he commissioned him to proceed to the place called El Capulin and eject therefrom the individuals settling there, and if they had any share and right to present in the matter for the place El Capulin, they were to present it before the governor. (R., 131–132.)

Then follows the petition of Miguel Romero to the governor stating that he had been notified by Fernandez to vacate the Capulin and that he had obeyed immediately; but that he had not removed his property, as he had held it for five years and six months without any objection until this year, when he had purchased parts which did not belong to him by law from parties claiming under the Andres Montoya grant, which instrument of grant in all due formality he presented, and that he did not see any reason why he should be interfered with or deprived of his purchase. (R., 132.)

I call especial attention to the action of the governor on this matter, which immediately follows, dated at Santa Fe, April 18, 1765. (R., 132–133.) It fixes beyond a doubt the fact that the land about which this controversy arose was considered by the governor Crown land. This is what is termed by claimants the decree of revocation of the Andres Montoya grant.

The governor decrees that the parties shall in no manner make settlement by building or cultivation at the

said place called El Capulin, nor on the lands asked for in the grant, under a penalty of a fine of $50, to be at once imposed, and further decrees that they be permitted only to have their stock on the said place of Capulin *as Crown land as other residents do*, without prejudice to the pueblos and rights of the Indians of Cochiti and San Ildefonso, of which the alcalde mayor of this city will notify them.

> In order to verify the contradictions and illegality which there may be in the issuance of this old grant which they present, as well as the nullities which are observed in it, let exhibition be made of the whole, including the certified copy of the will which they present, it being made part of the record, to the said republics of Cochiti and San Ildefonso, and to all the adjoining residents of the said place of Capulin, and also to the officers of the cavalry company of this royal garrison to ascertain whether they are or are not or may be pastures for their horses. (R., 133.)

The decree is concluded with the usual formalities.

It is clear that this decree declares El Capulin to be properly Crown land and reserved for general pasture grounds for all the parties in the community, particularly taking care of the rights of the Indians of Cochiti and San Ildefonso.

Then follows notice to parties. (R., 133.)

Attached to these are the grant papers in the Andres Montoya grant, which are dated in 1739.

It will be noticed that the land called for in the petition of Montoya is between the orchards or gardens

of Cochiti and San Ildefonso, the description being as follows:

> The said tract is bounded on the north by the said orchards of San Ildefonso and on the south by those of Cochiti, being distant from each place of the said orchards more than a league, and it is also bounded on the east by the Rio del Norte and on the west by the mountain of Cochiti. (R., 134.)

Then follows the grant by Governor Mendoza and the act of possession by Antonio Montoya. (R., 134–135.)

Then follows an indorsement by Mendoza in the following terms:

> SANTA FE, *October 26, 1739.*
>
> This grant is entered in my government book, which is deposited in the archives of this capital, for the disputes which may arise. (R., 135.)

Then follows the will of Andres Montoya, wherein he recites the land granted him in 1739. (R., 137.)

Then follows the *expediente* upon which the order of Governor Velez Cachupin of April 18, 1765, was made, declaring the lands in El Capulin to be Crown lands.

Following this is a petition to the governor by Bartolomé Fernandez, the alcalde who seems to have been participating in all these proceedings, in which he says:

> In obedience to that which was ordered by your excellency in the decree of April 18, 1765, I say, defending the right of the Republic of Cochiti, that of the Indians as well as of the residents joined to the said pueblo, all of whom have again asked me to do so, and your excellency, being in the said pueblo on your general visit, that the settlement of the place called El Capulin is extremely prejudicial

> to them, because it is the place where they pasture their large stock and horses. (R., 138–139.)

The alcalde states that he had examined the grant and found that the possession of the same was fraudulent, because it does not appear that citation of the adjoining landholders was made, and in addition he recites that in order that the grantee should acquire a right to the land granted he should settle it according to the royal laws, and failing, as he had failed, to make this necessary settlement, he had no rights which his heirs could claim, and that the clause in his will disposing of the grant was a nullity, for the reason that he could not give that which he did not own. In addition he says:

> It is observed that there is a contradiction in the matter of boundaries; for in the possession it is said that the boundaries on the north and south are distant one league from the orchards of San Ildefonso and Cochiti, and in the will the testator says one-half league, from which is inferred either the nullity of the possession or the ignorance of the grantee of what was asked for and of which possession was given, which proves the bad faith of his possession, etc. (R., 139.)

It will be noticed that if the conclusions of Bartolomé Fernandez in his petition to the governor in 1765, before referred to, were correct as a matter of law, the grant to Lucero of 1728 under consideration, having the same test applied to it, could hardly be said to be a valid grant to any extent.

Then follows the certificate of Fernandez, referring the matter to the alcalde mayor of the jurisdiction of San Ildefonso. (R., 139.)

In obedience to this certificate, Alcalde Pareja notified the Indians of his jurisdiction. (R., 139.)

Romero, being still dissatisfied, presented another petition to the governor, asking that he be further heard in the matter. (R., 139–140.)

On April 22, 1767, Governor Mendinueta made an order that Romero should be permitted to plead his cause before the governor. (R., 140.)

Then follows the petition of Miguel Romero and his brother saying that with regard to the report of Bartolomé Fernandez in the matter, there was no prejudice to him and his jurisdiction, because from the pueblo of Cochiti to his boundary there were more than three leagues and a half, and midway there is a settlement of Spaniards * in which there are some forty families, which do not prejudice the pueblo in anything.

He further states that the settlement of himself and his brother would not prejudice this pueblo, the Pueblo Cochiti, nor the settlement of the Spaniards, because the land was rough and bad and unused. It would not prejudice the Indians of San Ildefonso, because they were fully three leagues and a half away (to the north), claiming, however, that although the documents might not be valid, the natural rights of man are valid, and having occupied the property for five years and six months, and recently being deprived of his residence on said tract, he had suffered great damage and would suffer a great

* This settlement referred to must have been that at the Cañada Cochiti, between the Pueblo Cochiti on the south and the attempted settlement of the Romeros at Capulin.

deal more if deprived of the right to establish their stock farm as requested. (R., 140.)

On April 25, 1767, Governor Mendinueta, having examined the proceedings, and in view of the nullity of the grant, and by reason of the complaints of Fernandez in defense of the Indians and of the residents of the pueblo of Cochiti, one of those under his charge, and with the evidence that the possession given to Andres Montoya lacked the necessary circumstance of citation to the adjoining landholders, and that the land included within the said Montoya grant was not settled within the term provided by law, and in view of the fact that the grant and possession was given in the year 1739, and the settlement of Romero in 1765, he decreed that the grant was of no value; that neither Andres Montoya nor his heirs obtained any right to the tract at El Capulin.

> And so also that it does not aid the said Romero to have pastured his stock (which is what he calls settling) in acquiring a right to the property, inasmuch as he did so without just title, and he only could have done so in the same way in which it is enjoyed and used by the natives of Cochiti and the adjoining residents as *Crown land*; in which view I ought to order, and I do order, deciding definitely that neither Miguel Romero nor anybody else shall settle nor have ownership in the said tract of the Capulin, and that it shall be *held and esteemed as Crown land* for the common benefit of all those who may desire to pasture their stock on the same without excluding the said Romero, as was permitted by my predecessor, Don Tomas Velez Cachupin, in his decree of April 18, 1765. (R., 141.)

It will be noted, therefore, that the action had with reference to the property situate at El Capulin within the outboundaries of this grant, by two governors, Cachupin and Mendinueta, dated, respectively, April 18, 1765 (R., 132–133), and April 25, 1767 (R., 140–141), amounted to a declaration on each occasion that the land was *Crown land*, not only as against the parties seeking to obtain it, but as against everybody else in the province.

It will be noticed from the map that the Cañon Capulin lies immediately to the south of the Pueblo Viejo, contended by claimants to be the north boundary of the grant. Considering these two adjudications, above referred to, in connection with the testimony in the case as to the proper designation of the natural objects and pueblos in that locality, there is little doubt but that the present claim as to the north boundary is not well founded.

I attempted by photograph to lay before the Court of Private Land Claims and this court a correct idea of the topography of that locality. Owing to the unfavorable state of the weather at the time the photograph was taken, we were unable to get a good view, but upon close inspection of the photograph (R., 162) some idea may be had of the ruggedness of the country lying to the north of the Cañada Cochiti, reaching as far as the Frijoles Canyon, which is designated on the right of the photograph by fig. 4. As to the history of this locality, special attention is called to the papers of the Archeological Institute of America, American Series IV, part 2, chapter 4, by Prof. A. F. Bandelier.

It will be noted that just to the left of Frijoles Canyon and to the south a number of canyons, running in various directions, subdivide the country into what appear to be truncated cones, which are designated as *potreros*. As we go south these become less frequent until we strike the Cañada de Cochiti. The Parajito, referred to by Professor Bandelier on page 139, is the mesa forming the north side of the Canyon de los Frijoles. There are several canyons running one into the other that do not seem to have any names given them by Professor Bandelier, but they have been laid down on the map (Plaintiffs' Exhibit 7, R., 164) with modern names and designations, to wit, the Canyon Rancho, being next south of the Canyon de los Frijoles; the Cañada del Alamo, next south, which cuts quite a prominent figure in the topography of this section.

It will be noticed from this map that there is a canyon running into the Del Alamo from the south and west, and back of the mesa formed by these two canyons is still another mesa, evidently somewhat higher, upon which is designated the site of the Pueblo Viejo (old pueblo). This peculiar formation or mesa is designated as the Potrero de las Vacas, and the pueblo located thereon is contended by claimants to be the north boundary of the grant. From all the testimony in the case, even including that of Zenon Sandoval (R., 79), this pueblo was never known to have the name Cochiti associated with it, and according to Professor Bandelier it is one of the ancient Queres pueblos. The next prominent canyon to the south is the Canyon Capulin, over which the controversy arose

in 1765–1768, resulting in the revocation of the grant made in 1739 to Andres Montoya, and the declaration that it was Crown land, not only as against Andres Montoya and his heirs, but as against everybody else. The next marked canyon is designated on the map by the surveyor as Canyon Colorado, and seems to cut practically no figure in the case. The next to the south is the San Miguel Canyon, the south side of which is formed by a sharp narrow ridge, upon which is situated the ruins of another old pueblo, designated as Pueblo Cuesta Blanca. The various mesas between these canyons are not continuous, and according to the photograph, as well as Professor Bandelier, these mesas are broken up by canyons running in various directions. Referring to this pueblo (Pueblo Cuesta Blanca), Professor Bandelier says:

> They (the Queres) emphatically claim it as one of the former abodes of their tribe after they left the Potrero de las Vacas (p. 159, Part II).

The Pueblo Viejo, on the Potrero de las Vacas, is claimed by plaintiffs to be the north boundary of the grant.

Although there are a number of ruins, according to Professor Bandelier, from the Rito de los Frijoles southward, the Pueblo Viejo on the Potrero de las Vacas, the Pueblo Cuesta Blanca, and the Pueblo de Cochiti on the mesa just south of the Cañada de Cochiti are the three prominent ones. The map introduced in evidence by plaintiffs (Plaintiffs' Exhibit 7, R., 162), so far as the topography and location of the objects are concerned, is evidently inaccurate, as the general direction of the

canyons as they reach back into the mountains should have a marked turn toward the north. It will be noticed on the photograph that all of these canyons are headed by Peralta Canyon, the ridge on the eastern side of which is designated by the figures 3–3. This canyon comes out near the Rio Grande where the present pueblo of Cochiti is situate, 6 or 7 miles below the Cañada de Cochiti.

BRIEF.

I.

The original title papers in this case are produced from the hands of the claimants in a mutilated and incomplete condition, when they should have been in the archives, and the evidence of title held by the claimants should be an authenticated *testimonio* of these grant documents. With these documents is produced what is said to be a supplied copy of the same, to which objection was made on behalf of the Government, as it appears by the certificate of Juan Antonio Cabesa de Baca (R., 113–114) that the wording of the missing and mutilated parts had been supplied by oral testimony, evidently by parties in interest in the matter. Such an authentication, for the purpose of preserving the document as evidence against the Crown, so far as I have been able to discover, was unauthorized. (1 White, pp. 296–7.) I have had occasion many times to examine documents of this character, but the authentications of the same were made by the official custodian of the original or by the governor of the province, and never by an alcalde upon application of the parties. But, admitting for the purposes of the

argument that this authentication is valid and entitles the document to full faith and credit, it is apparent that it was never the intention of Antonio Lucero, a poor Mexican with a large family and without any property or place to live, to ask for a grant of over a hundred thousand acres of land, situated and located as it is claimed this one is; but, on the contrary, he petitioned for a piece of land situated "at the mesa of Cochiti" (*en la Mesa de Cochiti*), evidently desiring the agricultural lands in the Cañada Cochiti, which, as a matter of fact, were afterwards occupied. The location of this small piece of land is still further identified by his describing it as being at the mesa of Cochiti, "to which the Indians who rebelled retreated." He desired the land to cultivate 10 *fanegas* of wheat and 2 of corn, and to pasture his small stock and horses. For the purpose of pasturage he evidently asked for that district of the country bounded on the north by the old pueblo of Cochiti (Pueblo Viejo de Cochiti), which must have been within the immediate vicinity of his piece of land; on the east the del Norte River; on the south the lands of the natives of said pueblo, and on the west the Jemez Mountain. (See Plaintiff's Exhibit 2, R., 112.)

The west boundary of the grant, being the Jemez Mountain, can be determined in connection with the other boundaries without a particle of difficulty when we observe the topography of the country, because just back of the Cochiti mesa are the mountains rising to an enormous height, continuing west for 18 or 20 miles. As said by Judge Sluss, in the opinion, it was necessary

that two minds should meet, to wit, that of Lucero and that of the governor. The grant was made according to the boundaries asked for and the possession was delivered evidently not upon the ground, otherwise the alcalde would have pointed out in the manner usual in such cases the boundaries thereof, and at that time, 1728, there would have been a more formal declaration of the delivery of possession than is shown in this case.

II.

It is sought by the proceedings of 1785 before Alcalde Antonio de Armenta (R., 114–116) to estop the Government from attempting to question or restrict this grant, upon the ground that these proceedings constitute an adjudication by the Spanish Government that the Luceros and those claiming under them were the owners of the land lying in the Canyon de en Medio, north of the boundaries as established by the Court of Private Land Claims. The objection to these proceedings is fully set forth in the opinion of the court on the ground that the alcalde had no authority to bind the Government, and it does not appear that his action ever received the approval of the governor. An examination of these proceedings, however, will show that the alcalde did not adjudicate that these lands were the absolute and exclusive property of Lucero and his legal representatives, but that the Lieutenant Antonio Gallego was not properly there on account of the absence of the proper documents authorizing the same.

It may be noted also that the Government was not a party to these proceedings, and there was no attempt at an adjudication against the Government, only the action of the alcalde upon the relative rights of Antonio Lucero de Godoi and others and Gallego, it being purely a private litigation and in no way binding on the Government. These proceedings can have no presumption in their favor, as they were merely the act of an officer having no general powers, and their validity can not be sustained without the jurisdiction being first established.

III.

It is sought to still further estop the Government from questioning this claim by the adjudication in the matter of the proceedings of revocation of the Andres Montoya grant, made in 1739. (R., 131–141.) It is true that the decrees made in these proceedings were made by lawful authority, to wit, by Governors Cachupin, Mendoza, and Mendinueta, and in both the decrees of Cachupin, of April 18, 1765 (R., 132–133), and Mendinueta, of April 25, 1767 (R., 140–141), it is declared that the lands in the El Capulin were to be held and declared to be Crown lands.

The validity of the proceedings in this matter is admitted, for jurisdiction in respect of such matters was alone vested in the governor of the province, and the result sustains the Government's contention that the land south of Pueblo Viejo on the Potrero de las Vacas was Crown land.

The opinion of the Court of Private Land Claims was unanimous, and, without extending this brief, we submit that the judgment of the court below was correct.

Respectfully submitted.

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